SINGLE APPENDIX

IN THE

Supreme Court of the United States

October Term, 1973
No. 73-1697

STANDARD PRESSED STEEL CO., a foreign corporation,
Appellant,

v.

DEPARTMENT OF REVENUE,
Appellee.

ON APPEAL FROM THE WASHINGTON STATE
COURT OF APPEALS, DIVISION II

JULY 31, 1974

FILED MAY 13, 1974
PROBABLE JURISDICTION NOTED JUNE 17, 1974

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

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SINGLE APPENDIX

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RELEVANT DOCKET ENTRIES

Title of Case:

STANDARD PRESSED STEEL CO., a foreign corporation,
Appellant,

v.

DEPARTMENT OF REVENUE,
Respondent.

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[Letterhead omitted in printing]

BEFORE THE DEPARTMENT OF REVENUE OF THE STATE OF WASHINGTON

In the Matter of the Petition
For Refund and Petition for
Correction of Assessment of

STANDARD PRESSED STEEL COMPANY
Post Office Box 608
Benson East
Jenkintown, Pennsylvania 19046

DETERMINATION
No. 70-67
Registration No.
P409 011 840

TAXPAYER REPRESENTED BY: H. Robert Martinson, Engineer; Elizabeth J. Bracelin, Attorney; and Robert Keller, Attorney

DEPARTMENT OF REVENUE REPRESENTED BY:

INTERPRETATION AND APPEALS DIVISION: Don R. McCuiston, Hearing Officer

FIELD OPERATIONS DIVISION: S. Aronin, Audit Unit Supervisor

DATE AND PLACE OF CONFERENCE: March 16, 1970; Seattle, Washington

FACTS:

The taxpayer manufactures industrial and aerospace fasteners at Jenkintown, Pennsylvania and Santa Ana, California. In the state of Washington these products are sold to companies involved in the aerospace and aviation industries; the principal customer being The Boeing Company in Seattle. An audit, dated November 28, 1969, has been prepared from the accounting records maintained for the period from January 1, 1965 through June 30, 1969. This audit resulted in a tax and interest deficiency of $2,681.38 and tax assessment 59849 was issued for this amount on December 30, 1969. The assessment, plus extension interest, is unpaid at this time.

TAXPAYER'S EXCEPTIONS:

The taxpayer has voluntarily paid the Wholesaling—All other business and occupation tax, on periodic returns filed, measured by the majority of its sales to local customers. However, some of these sales were not reported (apparently through inadvertence) and this accounts for the total deficiency reflected by the audit. The taxpayer feels none of this tax is correctly due as its local activity is insufficient to generate the liability. It was explained that until February 11, 1966 a sales office was maintained at 1012 Summit Avenue in Seattle. This office was closed on this date and thereafter the taxpayer has had only one product specialist in the state. This is Mr. H. Robert Martinson, an engineer employee, who is a Washington resident residing at 2719 S.W. 322nd Street in Federal Way, Washington. Mr. Martinson operates out of his home and his primary duty is to consult with Boeing Company personnel regarding the company's anticipated needs and requirements for aerospace fasteners as well as discuss any difficulties which might develop with the product after delivery. He also consults, but to a much lesser extent, with a few other customers in the Seattle area. Since the facts are basically similar regarding sales to all customers included in the audit, we will confine this discussion to The Boeing Company situation. The information regarding future requirements for fasteners, as well as information regarding any product difficulties which he is unable to reconcile, is forwarded by Mr. Martinson to either Jenkintown, Pennsylvania or Santa Ana, California for action by the company. Information gathered by Mr. Martinson regarding Boeing Company's future needs is used by the taxpayer to determine if it should attempt to qualify for the

business. If it does, a sample of its proposed product is sent directly to Boeing and, if accepted, shipment of the product is made by common carrier from an out-of-state point directly to Boeing. Preliminary price and delivery data as well as orders and payments all run directly between Boeing and the taxpayer with no intervention by Mr. Martinson.

Under these facts it is stressed that the taxpayer's local presence in Washington is limited to one resident employee who acts solely as a consulting engineer and who has absolutely nothing to do with the mechanics of completing sales. This one employee's function is characterized as being similar to a conduit through which technical information passes to the company to enable it to keep abreast of developments in its product line. As judicial authority for believing this degree of local activity is insufficient to support this state's business and occupation tax, the taxpayer refers to the decision of this state's Supreme Court in *B.F. Goodrich v. The State of Washington*, 38 Wn.2d 663 (1951). In that case the court pointed out that it was bound by the then recent decision of the United States Supreme Court in *Norton Company v. Department of Revenue of Illinois*, 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377. The *Norton* case involved an attempt by the State of Illinois to levy its gross receipts retailers occupation tax on sales of abrasive machines and supplies manufactured in Massachusetts and sold in Illinois. In addition to its rather extensive selling activity in Illinois, the Norton Company also "stood ready to receive complaints and to give engineering and technical advice." The court ruled that the Illinois tax did not apply to sales in which orders were sent from Illinois customers directly to the Norton Com-

pany's home office in Massachusetts and were filled by shipment directly to the customer. The taxpayer feels that its situation is extremely similar, if not identical in pertinent points, with that considered by the court in the *Norton* case and requests consideration of its petition on these grounds.

DISCUSSION:

In our opinion the *Norton* and *Goodrich* decisions are not controlling in this situation. Rather, we believe the much more recent decision of the United States Supreme Court in *General Motors Corporation v. Washington*, 377 U.S. 436, 12 L. Ed. 430, 84 S. Ct. 1564, constitutes the authoritative case law on the subject. As an aside we might point out that, in our opinion, the *Norton* case is distinguishable on the facts since there is no evidence that the Norton Company engineers who stood ready to give technical advice were actually involved in the direct sales ruled exempt by the court. In any event, the *General Motors* case involved a situation where several different types of employees conducted activities in Washington which were not directly involved in the mechanics of completing sales but which, of course, were indispensable factors to General Motors in gaining and holding its share of the Washington market. The Court said, on Page 438, that

> . . . The Pontiac and Oldsmobile Divisions of General Motors had no branch offices in Washington. But these divisions had district managers, service representatives, and other employees who were residents of the State and who performed substantial services in relation to General Motors' functions therein, particularly with relation to the establishment and maintenance of sales, upon which the tax was measured. We place little weight on the fact that these divisions had no formal offices in the State, since in actuality the homes of these officials were used as corporate offices. Despite their label as "homes" they served the corporation just as effectively as "offices."

In our judgment, the services rendered locally by Mr. Martinson, while not directly involved in the mechanics of sales, are also substantial in relation to this particular taxpayer's functions since such services directly result in the "establishment and maintenance of sales," as in the *General Motors* case. In other words, the taxpayer has approached the Washington market through the presence and efforts of Mr. Martinson and we believe this is sufficient nexus, under the rationale of the *General Motors* decision to generate a business and occupation tax liability on the taxpayer's sales. It goes without saying that the taxpayer had good and sufficient reason for basing Mr. Martinson in this state. We think it obvious that these reasons are primarily related to the ultimate generation of sales and handling of customer relations. We are convinced that these activities, rather than being merely insignificant, constitute vital and contributing services toward securing, maintaining and holding a share of the local market for the taxpayer and, as the court said in the *General Motors* case, constitutes a business privilege for which the state can require a return.

We recognize that the taxpayer's local activities are much less than those conducted by General Motors. However, the reason for this is that the taxpayer's local business is on a much smaller scale. In proportion to the size of its operation, the taxpayer's local activities are, in every sense, equally as important as General Motors in gaining and holding its share of the local market.

DECISION AND DISPOSITION:

The taxpayer's petitions are denied. Extension interest of $91.95 has been added to tax assessment 59849 which increases it to an amount due of $2,773.33. This is due and payable within 30 days from the date of this Determination.

DATED this 24th day of July, 1970.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE
s/ DON R. MCCUISTON, *Hearing Officer*

[Letterhead omitted in printing]

Law Offices
Horswill, Keller, Rohrback,
Waldo & Moren
1220 IBM Building
Seattle, Washington 98101

FINAL
DETERMINATION

No. 70-67A

Attention: Mr. Robert K. Keller

Re: Standard Pressed
Steel Company
Registration No.
P409 011 840
Tax Assessment
59849

Gentlemen:

Your petitions dated August 5, 1970 and October 13, 1970, appealing Determination 70-67, have been received. In that Determination it was concluded that the taxpayer had established sufficient nexus in this state to support the assertion of the business and occupation tax on gross sales delivered from an out-of-state point. The facts are fully set out in the Determination and we reiterate only the following salient points: One resident employee engineer is maintained here for the purpose of consulting primarily with The Boeing Company regarding future requirements for aerospace fasteners and to settle any problems arising with this hardware after delivery. This product specialist operates out of his home at Federal Way, Washington and while he does not directly participate in the mechanics of completing the sales, information he gathers and his product recommendations contribute greatly to the taxpayer's ability to compete for this local business.

You contend that the impact of the business and occupation tax on the taxpayer's gross Washington sales creates an unconsitutional burden on interstate commerce. You also

point out that the local activities considered by the United States Supreme Court in *Norton Company v. Department of Revenue of Illinois,* 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377, and *General Motors Corporation v. Washington,* 377 U.S. 436, 12 L. Ed. 430, 84 S. Ct. 1564, were much greater than those present here. You make the further point that the Norton Company maintained a branch office and warehouse in Illinois as well as a group of engineers (whether in Illiniois or not is not known) who stood ready to give technical advice, and that the Court still exempted the Illinois business and occupation tax on direct sales from Massachusetts.

We have given this matter careful consideration and have concluded that Determination 70-67 correctly sets out the position of the Department of Revenue. We are convinced that the local activities of the resident employee engineer are indispensable constributions to the taxpayer's ability to gain and hold a share of the Washington market. We think the maintenance of an employee in this state for this purpose constitutes a local business location *which contributes directly* to the sales upon which the business and occupation tax is imposed. In our opinion, this is sufficient nexus to remove any possibility of an unconstitutional burden on interstate commerce.

We think further that the Norton and General Motors cases involve distinctions without any real differences. The Norton Company maintained a branch office and warehouse in Illinois and a group of engineers (either in Illinois or Massachusetts) who stood ready to give technical advice; yet the court exempted direct sales from Massachusetts. The reason for this, with which, incidentally, we

are in complete agreement, was that unlike the taxpayer's situation, none of Norton's facilities in Illiniois or its engineers actually participated in, or contributed to, such direct sales. Further, we can attach no significance to the fact that the degree of local activity conducted by both companies was much greater than that engaged in by the taxpayer. Obviously, the primary reason for this is that both Norton Company and General Motors deal with far larger segments of their respective local markets than does the taxpayer. In other words, this is really a question of proportion and not of comparable activities. In our opinion the local activities of the taxpayer's employee engineer are, in every sense, as equally important to its ability to gain and hold its share of the Washington market as the hierarchy of activities performed here by General Motors.

Since the United States Supreme Court's decision in the General Motors case is the most recent decision in this area, it is the most authoritative indication we have of the Court's attitude regarding the imposition of state excises on gross sales resulting from local activities performed by a resident employee engineer. We are convinced that the rationale of this decision supports the business and occupation tax here in question and your appeal is therefore, denied in full. This decision does not in any way jeopardize your right to further review of your protest. An appeal from this Determination may be taken to the Tax Appeals Board which will review it on an independent and impartial basis. If you wish, the matter can be heard informally. Mandatory extension interest of $131.36 has been added to the balance due under tax assessment 59489 which increases it to a total current amount due of $2,758.58. The due date for payment of this amount has been set at thirty

days from the date of this letter. If you wish to follow this appeal procedure, a petition for hearing must be directed to State of Washington, Tax Appeals Board, 1017 Cherry Street, Olympia, Washington, 98501, within this time.

Yours very truly,

STATE OF WASHINGTON
DEPARTMENT OF REVENUE

s/ JAMES R. STANFORD
Assistant Director

JRS: cc
cc: Standard Pressed Steel Company

STATE OF WASHINGTON
Board of Tax Appeals

STANDARD PRESSED STEEL COMPANY, *Appellant,* v. STATE OF WASHINGTON DEPARTMENT OF REVENUE, *Respondent.*	Docket No. 70-41 Re: Excise Tax Appeal ORDER FINAL DECISION

This matter came on as a formal appeal for hearing on the 23rd day of April, 1971, before the Board of Tax Appeals; appellant being represented by Robert K. Keller, Counsel; and respondent being represented by Michael D. Hansen, Assistant Attorney General; the Board having heard and considered the arguments made on behalf of both parties, the Board now makes its findings and decision and issues its order as follows:

TAX IN CONTROVERSY

Tax Under Appeal	Period Covered
Wholesaling Business and Occupation Tax	1/1/65 - 6/30/69

OPINIONS AND FINDINGS OF FACT

The facts concerned in this appeal were not disputed and were presented to this Board at the hearing substantially in the form of an oral stipulation. In dispute is the application of this state's Business and Occupation Tax laws to these facts. Specifically the appellant contends its activities are exempt as being conducted in interstate commerce. The respondent contends the appellant's activities are sufficiently intrastate in nature to come within this state's taxing jurisdiction.

The appellant's home office is located in Jenkintown, Pennsylvania where it has one of its manufacturing plants. Its other manufacturing plant is located in Santa Ana, California. It manufactures industrial and aerospace fasteners. Its principal customer in Washington is The Boeing Company in Seattle until February 11, 1966, the appellant maintains a sales office in Seattle. The appellant has a few other customers in Seattle and its arrangements with these customers are conducted in the same manner as with The Boeing Company will be applicable also to these other customers.

Until February 11, 1966, the appellant maintained a sales office in Seattle. Subsequent to that date the appellant has had only one employee in this state, Mr. Robert H. Martinson, a Washington resident who has operated out of his home in Federal Way, Washington, near Seattle. Mr. Martinson's primary duty as an engineer is to consult with The Boeing Company personnel regarding the company's anticipated needs and requirements for aerospace fasteners as well as to discuss any difficulties which might develop with the appellant's product after delivery. The information regarding future requirements for fasteners, as well as information regarding any product difficulties which he is unable to reconcile, is forwarded by Mr. Martinson to either Jenkintown or Santa Ana for action by the appellant. Information gathered by Mr. Martinson concerning The Boeing Company's future needs is used by the appellant to determine if it should attempt to qualify for the business. If it does, a sample of its proposed product is sent directly to Boeing and, if accepted, shipment of the product is made by common carrier from an out-of-state point directly to The Boeing Company. Preliminary price and delivery data as well as orders and payments all run

directly between The Boeing Company and the appellant with no action required by Mr. Martinson. For purposes of information, Mr. Martinson does receive copies of the sales invoices issued by the appellant to customers Mr. Martinson has had contact with.

It was brought out in evidence that in addition to the customer contact made by Mr. Martinson, a group of the appellant's engineers visited The Boeing Company for about three days each six weeks. Mr. Martinson made arrangements with Boeing personnel for meetings with the engineer groups during their stays in Seattle. The engineers augmented and enlarged on the consulting and engineering work performed by Mr. Martinson and further permitted the appellant to meet the needs of The Boeing Company.

It was brought out that Mr. Martinson's supervisor was the appellant's sales manager located in Jenkintown, Pennsylvania. It was brought out that at times Mr. Martinson forwarded material to Jenkintown to be typed and mailed to customers. Mr. Martinson did not list his home phone in the appellant's name, but he did furnish his home phone number to Boeing personnel for more direct communication at various hours. Mr. Martinson did maintain a telephone answering service listed in the appellant's name. Messages from this service were relayed to Mr. Martinson for response and action. The bills for this service were sent directly to Jenkintown for payment.

Mr. Martinson by deposition stated he maintained an office location in his home consisting of a desk, file and a telephone on the desk, even though the number was listed in his own name. Mr. Martinson stated he took a deduction

on his income tax return for the use of his home as an office.

In issue is whether the activities of Mr. Martinson on the appellant's behalf and the position maintained for the appellant in Seattle by Mr. Martinson are sufficient to justify the respondent's imposition of Washington's Business and Occupation Tax. In our opinion they are.

We find the situation in this appeal to be very much like that in the case of *General Motors Corp. v. Washington,* 377 U.S. 436 (1964), except for the size of the corporate taxpayers and the volume of the taxpayers' activities in this state. We find also that the U.S. Supreme Court recently denied Certiori in the somewhat similar New Jersey case of *Clairol, Incorporated v. Kingsley,* 270 Atlantic 2d 702 (1970).

The appellant has placed particular reliance in support of its position on the case of *Norton Company v. Department of Revenue of Illinois,* 340 U.S. 534 (1951). The court in its syllabus in that case stated:

> "When a foreign corporation has gone into a state to do local business by state permission and has submitted itself to the taxing power of the state, it can avoid taxation on some sales to persons in that state only by sustaining the burden of showing that particular transactions are disassociated from the local business and interestate in nature.
>
> "The only transactions here involved that are so clearly interstate in character that the state could not reasonably attribute their proceeds to the local business, are orders sent directly to its head office by customers and shipped directly to the customers from the head office; and such transactions are not subject to this tax."

The appellant in the present appeal points out that The Boeing Company's orders for the purchase of the appellant's products are sent directly to the appellant's manufacturing plants outside this state. The manufactured products are shipped into this state directly to Boeing by common carrier. The negotiations for the sales order, invoicing, and payment are handled directly between the appellant's out-of-state office and Boeing with no required action by Mr. Martinson. On the basis of these facts, the appellant considers the holding in the *Norton* case to be controlling.

In addition to these facts, we find the activities of Mr. Martinson operating on behalf of the appellant to be necessary in order that the appellant might:

1. Become aware of its products which The Boeing Company might be able to use.
2. Obtain the engineering design for such products.
3. Secure the testing of sample products to qualify the products for sale to The Boeing Company.
4. Resolve problems in the use of the products after receipt and use by The Boeing Company.
5. Obtain and retain good will and working rapport with Boeing personnel.
6. Secure and update lists of Boeing purchasing specialists or control buyers, and the commodities for which they were responsible, for the use of the invoicing personnel at the appellant's home office.

We find that these factors were a necessary and vital part in the appellant's ability to gain its market with The Boeing Company in this state in the first instance and to hold its market with Boeing in the second. We find that without these factors, secured through the person of Mr. Martinson, or by some other qualified agent or agency of the appellant in this state, it is very unlikely the appellant

could have secured and retained The Boeing Company as its customer. We find that Mr. Martinson's activities, although not directly concerned with the writing of a sales order, the making of delivery, or the procurement of payment, constituted all the activities of selling necessarily preliminary to the writing of the orders. We find the sales activities of Mr. Martnison to be of such importance that the writing of the orders and subsequent activities of delivery and payment are only the end result of his intensive and extensive activities and the activities of the visiting groups of appellant's engineers in this state.

We cannot find that the acts of the purchaser mailing its orders to the appellant's out of state address and making payment to that address, and the shipment of the appellant's products by common carrier direct to the purchaser can be so divorced from the appellant's other corporate sales activities conducted in this state by Mr. Martinson and the other engineers to create an aura of immunity around the appellant's total operation exempting it from this state's taxing jurisdiction.

We believe the following from the text of the *General Motors* case, written in 1964 (The *Norton* case was written in 1951), illustrates the factual similarity between the facts in that case and the facts surrounding Mr. Martinson's activities in this appeal:

> "The district managers lived within the State of Washington and their jobs were 'the maintenance of a quality organization—dealer organization—and the follow-through and administration of programs, plans and procedures within their district, that will help to develop the dealer organization, for the best possible financial and sales results.' R. 109. While he had no office within the State, the district manager operated from his home where he received mail and telephone calls and otherwise carried on the corporation's business. He called upon each dealer in his district on an average of at least once a month, and often saw the larger dealers weekly."

In addition to the activities of the resident district managers, General Motors out-of-state zone manager, service manager and used car manager (living and headquartered in Portland, Oregon) made periodic visits to Washington dealers in a supervisory and advisory capacity. Their activities generally were comparative to the appellant's groups of out-of-state engineers that made periodic visits to The Boeing Company.

Except for the obvious difference in the size and volume of the business and activities conducted by General Motors as compared to that of the appellant, we believe the factual situations are quite parallel. We find the U.S. Supreme Court's opinion in the *General Motors* case was compatible with and did not overturn the court's decision in the *Norton* case. The court in its several syllabi in the *General Motors* case stated:

> "1. Though interstate commerce cannot be subjected to the burdens of multiple taxation, a tax measured by gross receipts is constitutionally proper if fairly apportioned.
>
> "2. The burden of establishing exemption from a tax rests upon a taxpayer claiming immunity therefrom. *Norton Co. v. Department of Revenue*, 340 U.S. 534, followed.
>
> "3. The bundle of appellant's corporate activities or 'incidents' in Washington afforded the State a proper basis for imposing a tax.
>
> "4. The evidence was sufficient to warrant the finding by the state court of a nexus between appellant's in-state activities and its sales there, especially where its

taxable business was so enmeshed with what it claimed was nontaxable.

"5. This Court does not pass upon appellant's claim of 'multiple taxation' in violation of the Commerce Clause because appellant did not show what definite burden in a constitutional sense the St. Louis tax places on the identical interstate shipments by which Washington measures its tax or that Oregon levies any tax on appellant's activity bearing on Washington sales."

In the present appeal this Board likewise does not pass on an issue of "multiple taxation" because no showing was made by the appellant that a definite burden was placed upon it as a result of the taxation exerted by the respondent.

In our opinion the holding of the U.S. Supreme Court in the *General Motors* case cited herein is controlling with respect to the factual situation presented to this Board in this appeal.

In addition to considering the issues and facts in this appeal, as noted above, we make the following specific findings of fact and conclusions of law.

FINDINGS OF FACT

1. The appellant corporation, Standard Pressed Steel Company, headquartered in Jenkintown, Pennsylvania, made sales of its manufactured products to customers, principally The Boeing Company, located in Seattle, Washington.

2. Its resident sales engineer, Mr. Martinson, operating from his home located in Federal Way, Washington, maintained close and continuous contact with The Boeing Company personnel.

3. The purpose of Mr. Martinson's activities, as the appellant's employee, was to secure and maintain the appellant's market for its products with The Boeing Company, the appellant's customer.

4. Mr. Martinson, with the aid of groups of the appellant's engineers who made periodic visits to The Beoing Company, accomplished this objective, although not being directly concerned with the writing of purchase orders, delivery of the products, or collection of payment.

5. The instate activities of Mr. Martinson and of the visiting engineer groups were so enmeshed with the total of the appellant's sales activity with The Boeing Company, they cannot be excluded from consideration with respect to the question of whether the appellant's sales were exempt under the Commerce Clause of the U.S. Constitution.

6. The evidence presented was sufficient to warrant the respondent's assessment of Business and Occupation Tax upon the appellant's sales concerned in this appeal.

CONCLUSIONS OF LAW

1. The evidence presented was sufficient to warrant the finding by respondent of the necessary minimum contact between the appellant's in-state activities and its sales in this state upon which to base its jurisdiction for the assessment of Business and Occupation Tax.

2. The decision of the U.S. Supreme Court in the case of *General Motors Corp. v. Washington*, 377 U.S. 436, supports the assessment made by the respondent.

3. The recent refusal of the U.S. Supreme Court to grant Certiori in the case of *Clairol, Incorporated v. Kingsley*,

270 Atlantic 2d 702, indicates the court's continuing consistent holding.

4. The holding of the U.S. Supreme Court in the case of *Norton Company v. Department of Revenue of Illinois*, 340 U.S. 535, does not contravene the court's holding in the *General Motors* case nor this Board's decision in this appeal.

DECISION

Having analyzed and considered the several issues raised, we conclude that the respondent's assessment of tax in issue in this appeal is proper and we hereby order that the same be sustained.

Dated at Olympia, Washington
this 26th day of May, 1971

s/ R. H. SINGER
Executive Secretary

STATE OF WASHINGTON
BOARD OF TAX APPEALS

s/ROBERT I. TENNEY
Chairman

s/ J. JAY WILLIAMS
Member

[Affidavit of Service omitted in printing.]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

STANDARD PRESSED STEEL COMPANY, *Petitioner,* v. STATE OF WASHINGTON DEPARTMENT OF REVENUE, *Respondent.*	No. 44750 PETITION FOR JUDICIAL REVIEW

COMES NOW Standard Pressed Steel Company, Petitioner herein, and, pursuant to RCW 34.04.130, respectively shows the court:

I

That petitioner was the Appellant in a contested proceeding for cancellation and abatement of $2,909.35 in Business and Occupation taxes assessed against petitioner and refund of $30,535.56 in Business and Occupation taxes paid to the Department of Revenue, State of Washington, on the ground that petitioner was and is not liable for payment of Business and Occupation taxes pursuant to the Constitution of the United States of America and the State of Washington, said proceeding being identified as Standard Pressed Steel Company, Appellant vs. State of Washington Department of Revenue, Respondent, Docket No. 70-41, Excise Tax Appeal before the State of Washington Board of Tax Appeals.

II

That a Hearing in said proceedings was held by said Board on April 23, 1971.

IV

That on May 26, 1971, said Board entered a Decision in said proceeding. That a true and correct copy of said Decision is attached hereto, marked Exhibit A, and is hereby incorporated herein by reference.

V

That said Board's decision of May 26, 1971, has prejudiced petitioner's substantive rights and petitioner is aggrieved thereby.

VI

That petitioner has paid the $2,909.35 interest and tax assessment as required by RCW 82.03.180 to the Department of Revenue and the amount sought by way of refund herein is therefore $33,444.91 plus interest.

VII

That petitioner hereby petitions the above-entitled court for a review of said Decision entered by said Board on May 26, 1971, and respectfully shows the court:

That the said Decision of said Board is in violation of the Constitution of the United States Government and the State of Washington in that the Business and Occupation taxes herein constitute an unlawful interference with interstate commerce.

WHEREFORE, petitioner prays:

1. That this court proceed to review said decision of said Board in the manner provided in RCW 34.04.130;

2. That this court reverse said decision of said Board and to grant petitioner judgment against the State of Washington Department of Revenue in the amount of $33,444.91 plus interest and costs.

3. That the court grant such other and further relief as it may deem proper.

s/ ROBERT K. KELLER

Robert K. Keller, Attorney for Standard Pressed Steel Company, Petitioner

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

STANDARD PRESSED STEEL COMPANY, *Appellant*, v. DEPARTMENT OF REVENUE, *Respondent*.	No. 44750 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER coming on regularly for hearing before the above-entitled court on the 16th day of June, 1972, and the appellant appearing by and through its attorney, Kenneth L. Cornell, of the law firm of Horswill, Keller, Rohrback, Waldo & Moren, and the respondent appearing by and through its attorneys, SLADE GORTON, Attorney General for the State of Washington, and William D. Dexter, Assistant Attorney General, and the court considering the evidence and the arguments of respective counsel, now, therefore, the above-entitled court makes the following:

FINDINGS OF FACT

I

That at all times herein material, Standard Pressed Steel Co., appellant herein, conducted business activities as a foreign corporation within the state of Washington.

II

That the activities carried on by appellant in the state of Washington have not been established as disassociated from the gross receipts derived by appellant from the sales in question to the Boeing Company.

III

That the appellant employed a full time resident agent within the state of Washington to conduct activities with the Boeing Company which activities were carried on in part by appellant's employee out of his residence in Washington as an office, and which activities were instrumental in appellant establishing and maintaining Boeing as its customer for the sales giving rise to the gross receipts in question.

IV

That it was necessary that appellant have its employee Mr. Martinson in the state of Washington so that the appellant could: (1) become aware of which of its products the Boeing Company might be able to use; (2) secure the testing of sample products to qualify the products for sale to the Boeing Company; (3) obtain the engineering designs for such products; (4) resolve problems in the use of the products after receipt and use by Boeing Company; (5) obtain and retain goodwill and working rapport with Boeing personnel, and (6) secure and update lists of Boeing purchasing specialists or control buyers and the commodities for which they are responsible for the use of the invoicing personnel at the appellant's home office.

V

That the purpose of the appellant's activities in the state of Washington was to provide sufficient facts to the appellant to enable it to make Washington sales to the Boeing Company in the state of Washington.

CONCLUSIONS OF LAW

I

That the appellant conducted sufficient intrastate activity for imposition of the Washington business and occupation tax on authority of *General Motors Corp. v. State*, 60 Wn.2d 862, 376 P.2d 843 (1962), aff'd 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564 (1964).

II

That while no one single aspect of appellant's activity can itself be determinative of doing business in this state for business and occupation tax purposes, each activity must be considered in conjunction with other activities to determine whether the cumulative effect of any one activity coupled with all other activities is instrumental in the appellant's establishing and holding its Washington market for the sale of its products.

III

That the appellant has the burden of proving under *General Motors Corp. v. State*, 377 U.S. 436, 12 L. Ed. 2d 438, 84 S. Ct. 1564 (1964), and *Norton Co. v. Dept. of Revenue*, 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377 (1951), that its intrastate activities in this state were disassociated from the gross receipts it derived from sales to the Boeing Company in Washington.

IV

That the effect of the activities involved in establishing and holding Washington as a market for the appellant's sales in question and not the form of the operation nor the quantity of the operation in Washington controls in determining Washington's jurisdiction to impose its business and occupation tax upon appellant's activities in Washington measured by its Washington gross receipts.

V

That it is not necessary that appellant's Washington instate activities be denoted "sales" activities so long as the activities cannot be disassociated from appellant's Washington sales.

DONE IN OPEN COURT This 10th day of October, 1972.

s/ FRANK E. BAKER
Judge

Presented by:

s/WILLIAM D. DEXTER

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Assistant Attorney General
415 General Administration Bldg.
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Telephone: (206) 753-5515
Attorney for Respondent

Approved as to form and Notice of Presentation waived:

HORSWILL, KELLER, ROHRBACK, WALDO & MOREN

By.....
Attorneys for Appellant

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF THURSTON

STANDARD PRESSED STEEL CO., *Appellant,* v. DEPARTMENT OF REVENUE, *Respondent.*	No. 44750 JUDGMENT

THIS MATTER Coming on regularly for hearing before the above-entitled court on the 16th day of June, 1972, and the appellant appearing by and through its attorney, Kenneth L. Cornell, of the law firm of Horswill, Keller, Rohrback, Waldo & Moren, and the respondent appearing by and through its attorneys Slade Gorton, Attorney General for the State of Washington, and William D. Dexter, Assistant Attorney General, and the court having made its findings of fact and conclusions of law, now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED That the appellant conducted sufficient intrastate activity for imposition of the Washington business and occupation tax on authority of *General Motors Corp. v. State,* 60 Wn.2d 862, 376 P.2d 843 (1962), aff'd 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564 (1964).

It is futher ORDERED, ADJUDGED and DECREED That the final decision of the State of Washington Board of Tax Appeals in Docket No. 70-41 is affirmed.

IT IS FURTHER ORDERED, ADJUDGED and DECREED That the refund requested by the petitioner in its petition for judicial review is denied and that petitioner take naught by this suit.

It is further ORDERED, ADJUDGED and DECREED That respondent is entitled to recover its costs and disbursements herein to be taxed.

DONE IN OPEN COURT This 10th day of October, 1972.

s/ FRANK E. BAKER
Judge

Presented by:

s/ WILLIAM D. DEXTER

William D. Dexter
Assistant Attorney General
415 General Administration Bldg.
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Telephone: (206) 753-5515
Attorney for Respondent

Approved as to Form and Notice of Presentation Waived:

HORSWILL, KELLER, ROHRBACK, WALDO & MOREN

By.....
Attorneys for Appellant

[Affidavit of Service omitted in printing]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

STANDARD PRESSED STEEL CO., *Appellant,* v. DEPARTMENT OF REVENUE, *Respondent.*	No. 44750 NOTICE OF APPEAL

TO: DEPARTMENT OF REVENUE, STATE OF WASHINGTON, Respondent, and Slade Gorton, Attorney General, and William D. Dexter, Assistant Attorney General, its attorneys

AND TO: The Clerk of the Above-entitled Court

YOU AND EACH OF YOU are hereby notified that appellant being aggrieved by reason of the judgment entered in this cause against appellant on the 10th day of October, 1972, does hereby appeal to the Supreme Court of the State of Washington from that certain judgment made, rendered and entered in this court and cause on the 10th day of October, 1972, and from each and every part of said judgment of said Superior Court, and from all rulings and orders, including Findings of Fact and Conclusions of Law, adverse to the appellant which occured during the trial of this case and prior and subsequent to the entry of said judgment. One of the contentions of appellant on appeal is that the case involves the question that the imposition of a tax is invalid on the ground of repugnancy to the Constitution of the United States and of the State of Washington.

DATED this 10th day of October, 1972.

KENNETH L. CORNELL
Of Keller, Rohrback, Waldo, Moren & Hiscock
Attorneys for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STANDARD PRESSED STEEL COMPANY, *Appellant,* v. DEPARTMENT OF REVENUE, STATE OF WASHINGTON, *Respondent.*	No. 1022-II Division Two Filed Dec. 3, 1973

ARMSTRONG, J.—This is an appeal from a Superior Court judgment affirming the final decision of the Board of Tax Appeals upholding the imposition of this state's business and occupation tax upon plaintiff, Standard Pressed Steel Company. It was the contention of plaintiff that imposition of the tax was unconstitutional. We hold that levying of the tax was constitutionally permissible.

The hearings below before both the Board of Tax Appeals and the trial court were conducted on the basis of the deposition of H. Robert Martinson, an employee of plaintiff, various exhibits introduced in connection with the deposition, and the pleadings in the case. There was no "live testimony." For this reason, it is unnecessary for us to consider the five findings of fact assigned as error by the plaintiff, because we may approach review of the plaintiff's contentions as indicated by the Supreme Court in *Smith v. Skagit County*, 75 Wn.2d 715, 718, 453 P.2d 832 (1969), quoting with approval the following language from *Carlson v. Bellevue*, 73 Wn.2d 41, 48, 435 P.2d 957 (1968):

> The appeal, therefore, from the trial court's judgment brings before us, in the same form and content, the identical documents and records presented to the trial court. Under these circumstances, we are not bound by disputed findings of the trial court to the same extent and in the same manner as where the trial

> court's findings rest upon the oral testimony of witnesses. . . . We are entitled to make our own examination of the records thus presented and determine the merits of the contentions going to the issue of arbitrary, capricious, and unreasonable legislative action. (Citations omitted)

In other words, this court on appeal stands in the same position as the trial court in looking at the facts of the case and should review the record de novo. *Anderson v. Island County*, 81 Wn.2d 312, 316, 501 P.2d 594 (1972).

Both *Anderson* and *Smith* were zoning cases and the standard of judicial review was whether there had been arbitrary, capricious, and unreasonable legislative action. In this case, the scope of judicial review is pursuant to the Administrative Procedures Act and limited by the provisions of RCW 34.04.130(6).[1] Our review here is to determine from the facts whether the Board of Tax Appeals' decision sustaining imposition of the business and occupation tax was in violation of constitutional provisions.

The record discloses that plaintiff, Standard Pressed Steel Company, is a foreign corporation with production facilities located in Jenkintown, Pennsylvania and Santa Ana, California. A significant amount of plaintiff's business involves the manufacture and sale of fasteners (nuts and

1. RCW 34.04.130(6) provides: "(6) The court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
(a) in violation of constitutional provisions; or
(b) in excess of the statutory authority or jurisdiction of the agency; or
(c) made upon unlawful procedure; or
(d) affected by other error of law; or
(e) clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or
(f) arbitrary or capricious."

bolts, generally) to be used in the aerospace industry, and plaintiff's principal customer in this state during the tax years in question was the Boeing Company in Seattle.

The only employee of Standard Pressed Steel present within the State of Washington over the tax years in question was H. Robert Martinson, a "sales engineer." Martinson performed his activities for Standard Pressed Steel out of a portion of a room in his home equipped with a desk, telephone, and a file cabinet.

Martinson's primary function was to work with Boeing's engineers in the initial phases of aerospace design and construction, and through contact with Boeing engineers inform himself of possible prospective needs of the Boeing Company, and its various subcontractors, for aerospace fasteners. He would then initiate a product engineering request describing in detail the specifications required by Boeing and send this information on to plaintiff's out-of-state offices. After receiving this information from Martinson, plaintiff would make a decision as to whether or not Standard Pressed Steel would attempt to "qualify" as a Boeing supplier of a particular fastener; that is, Boeing determined who could be a supplier of component parts by qualification tests done at their Seattle facilities. If plaintiff should decide to attempt to qualify as a supplier, the company would manufacture sample qualification pieces and forward these to Boeing for qualification tests. If the fasteners met the required specifications, Standard Pressed Steel would become an "approved source" and the Boeing Company would then enter into negotiations with plaintiff's out-of-state offices for purchase of the fasteners.

The record reflects that all such dealings and negotiations

between Boeing and Standard Pressed Steel were carried on directly between Boeing and plaintiff's out-of-state offices. Martinson was bypassed completely, except to the extent that he periodically informed plaintiff of the various subcontractors, purchasing specialists, and control buyers of commodities for which Standard Pressed Steel was an approved source. Martinson had nothing to do with quoting prices, delivery dates, receiving, soliciting, accepting orders, handling shipments, or approving credit. No inventories were kept in this state, and all deliveries were made by plaintiff directly through a common carrier.

The above qualification process consumed approximately 80 to 90 percent of Martinson's time, with the remainder devoted to "trouble-shooting." If Boeing experienced any problems in their use of the fasteners supplied by the plaintiff, Martinson's duties were to relay this information to plaintiff's engineers at the out-of-state offices, and there the engineers would work to resolve any difficulties with the product in their laboratories. The engineers would then forward their solution to Martinson, who would present the proposed solution to Boeing's engineers in Seattle. In addition, approximately three days every six weeks Martinson would set up meetings between Boeing engineers and visiting groups of plaintiff's engineers to visit and discuss engineering problems.

Based on the above activity within the State of Washington, the state contends that Standard Pressed Steel Company is subject to the business and occupation tax measured by gross receipt from plaintiff's sales to the Boeing Company.

In assessing the constitutionality of imposing the business and occupation tax in this case, we may start with the undisputed proposition that a state may not tax the privilege of engaging in interstate commerce, but may impose a tax that is incident upon an activity that is peculiarly local and distinct from interstate commerce. *General Motors Corp. v. Washington*, 377 U.S. 436, 12 L. Ed. 430, 438, 84 S. Ct. 1564 (1964); *Western Live Stock v. Bureau of Revenue*, 303 U.S. 250, 82 L. Ed. 823, 58 S. Ct. 546 (1938). In other words, a state *does* have the right to tax the privilege of doing *local* business, and if there is a taxable incident within the jurisdiction, the tax does not offend the commerce clause of the constitution as a tax on the privilege of doing interstate business. *Greyhound Lines, Inc. v. Tacoma*, 81 Wn.2d 525, 527, 503 P.2d 117 (1972); *Rena-Ware Distrib. Inc. v. State*, 77 Wn.2d 514, 519, 463 P.2d 622 (1970).

Here the record clearly discloses that Standard Pressed Steel Company employed Mr. Martinson as a resident agent within this state to conduct business activities with the Boeing Company, in part out of his Washington residence as an office, so that Standard Pressed Steel could: (1) become aware of which of its products the Boeing Company might be able to use; (2) secure the testing of sample products to qualify the products for sale to the Boeing Company; (3) obtain the engineering designs for such products; (4) resolve problems in the use of the products after receipt and use by the Boeing Company; (5) obtain and retain goodwill and working rapport with Boeing personnel; and (6) secure and update lists of Boeing purchasing specialists or control buyers, and the commodities for which they are responsible, for the use of the personnel at the plaintiff's home office.

We are of the opinion that the foregoing substantial services constituted a sufficient peculiarly local and distinct taxable incident within the State of Washington such that imposition of the business and occupation tax was not on the privilege of engaging in interstate commerce, but rather on the privilege of doing local business.

Our inquiry does not end here, however, for even when there is a peculiarly local activity, the measure of the tax must be reasonably related to those local incidents. *General Motors Corp. v. Washington, supra.* A tax measured by gross receipts from sales by a foreign corporation to customers within the state must be closely related to the local activities of the corporation, for due process requires "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax." *Miller Bros. v. Maryland,* 347 U.S. 340, 345, 98 L. Ed. 744, 74 S. Ct. 535 (1954).

It might be argued that since gross receipts from plaintiff's sales to the Boeing Company represent extensive manufacturing and operational activities in Pennsylvania and California, such gross receipts are not fairly related to the activities of Mr. Martinson. However, this contention was discussed in *Dravo Corp. v. Tacoma,* 80 Wn.2d 590, 599, 496 P.2d 504 (1972), as follows:

> The fact that the value which the gross receipts measure is, in large part, the result of activity *outside* the territorial limits of the taxing jurisdiction does not mean the gross receipts are not fairly related to the activity *within* the jurisdiction. There is no constitutional objection to resorting to extraterritorial elements in determining the *measure* of a tax. *General Motors Corp. v. State,* 60 Wn.2d 862, 874, 376 P.2d 843 (1962), *aff'd,* in *General Motors Corp. v. Washington, supra*; *Wisconsin v. J.C. Penney Co., supra* at 445, *rehearing denied,* 312 U.S. 712, 85 L. Ed. 1143, 61 S. Ct. 444 (1941); *Great Atl. & Pac. Tea Co. v. Grosjean,* 301 U.S. 412, 425, 81 L. Ed. 1193, 57 S. Ct. 772, 112 A.L.R. 293 (1937).

Plaintiff relies on *Norton Co. v. Department of Revenue,* 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377 (1951), in support of the contention that Standard Pressed Steel's sales to the Boeing Company were not sufficiently related to Mr. Martinson's activities to justify the tax. In that case, the Norton Company was a Massachusetts corporation that manufactured and sold abrasive machines. It sought a refund for taxes paid under the provisions of Illinois' occupation tax. The Norton Company had no salesmen within Illinois, but it did maintain an office and warehouse in Chicago where it kept a substantial inventory. The company also had a group of engineers available to supply engineering and technical advice.

The United States Supreme Court upheld the tax where the measure of the tax attributed to the Chicago branch income from all sales that utilized it either in receiving orders or distributing goods. The court noted that the taxpayer had not established that such services as were rendered by the Chicago office were not decisive factors in holding that market. On the other hand, the court held that proceeds from orders sent directly to Massachusetts by the customer and shipped directly to the customer from Massachusetts were not reasonably attributable to the local business, and therefore not subject to the Illinois tax. *Norton Co. v. Department of Revenue, supra.*

From this holding plaintiff argues that since the presence of consulting engineers in Illinois was not enough to justify

the tax on the interstate items in *Norton*, the activities of Mr. Martinson should not sustain the tax on sales made directly between Boeing and plaintiff's out-of-state offices in this case.

However, plaintiff overlooks the fact that implicit in the *Norton* decision was the conclusion that the activities of the the local Chicago office, including the activities of the engineers, were not decisive factors in holding or establishing the market reflected by the direct, interstate sales. For example, the Norton decision was construed by our State Supreme Court as follows: "We only interpret the *Norton Co.* case as holding that such a tax may not be levied upon the proceeds from sales with which the local outlet had nothing to do." *B.F. Goodrich Co. v. State*, 38 Wn.2d 663, 675, 231 P.2d 325 (1951).

We are satisfied that the local activities of Mr. Martinson were instrumental in establishing and maintaining the Boeing Company as a market for the sales giving rise to the proceeds by which the state seeks to measure this tax. We therefore conclude that because the gross receipts from plaintiff's sales to the Boeing Company were reasonably related to the local incidents of the tax, imposition of the business and occupation tax here was not offensive to due process.

Plaintiff contends that the state's imposition of the business and occupation tax creates a multiple burden of taxation on plaintiff's interstate commerce. It is of course true that in judging the state's power to levy a tax measured by activities connected with interstate commerce, the following determinations represent guidelines presently employed:

> (1) Whether the tax places an extra burden on interstate commerce not borne by intrastate commerce, or erects barriers, placing out-of-state businesses at a disadvantage when competing locally; ***the discrimination test.*** (2) Whether the interstate commerce involved is subject to the risk of repeated exactions of the same nature from other states; ***the multiple burden test.***

McKinnis Travel Service v. State, 78 Wn.2d 229, 232, 472 P.2d 392 (1970); *Public Utility Dist. No. 2 of Grant County v. State*, 82 Wn.2d 232, 237, 510 P.2d 206 (1973).

In this case no argument has been advanced that discrimination against interstate commerce exists; nor could it be so argued, since this tax applies to all "businesses" in the State of Washington whether they engage in interstate commerce, intrastate commerce, or both. *McKinnis Travel Service v. State, supra.* As to the contention that the tax creates a multiple burden, we note that the United States Supreme Court, as well as the Supreme Court of this state, has held that the burden is upon the taxpayer to affirmatively show that its activities are subject to taxation elsewhere. *General Motors Corp. v. Washington, supra*; *Washington-Oregon Shippers Cooperative Ass'n. v. Schumacher*, 59 Wn.2d 159, 367 P.2d 112 (1961). In this case we find no such affirmative showing other than the unsupported assertion in plaintiff's appellate brief that a multiple burden has been created.

For the foregoing reasons, we find no constitutional infirmities derived from either the due process or commerce clauses to preclude the state from levying a tax upon the local activities of Standard Pressed Steel Company. Further, it was constitutionally permissible to measure that tax by the value of gross receipts from sales to the Boeing

Company's facilities in this state. We therefore sustain the imposition of the business and occupation tax in this case.

Affirmed.

We concur:

PEARSON, C. J.

PETRIE, J.

ARMSTRONG, J.

[Affidavit of Service omitted in printing]

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STANDARD PRESSED STEEL COMPANY, *Appellant*, v. DEPARTMENT OF REVENUE, STATE OF WASHINGTON, *Respondent*.	No. 1022-II PETITION FOR REHEARING

Appellant, Standard Pressed Steel Company, in response to the opinion of this court filed on December 3, 1973, hereby petitions the court for a hearing of this case.

Petitioner respectfully alleges that the opinion of this court should be changed in the following respects:

1. Based on the holding of the United States Supreme Court in *Norton Co. v. Department of Revenue*, 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377 (1951), the activities performed by appellant's resident engineer were not decisive factors in holding or establishing the Washington market.

On page 5 of this court's opinion, the court stated that Martinson's services on behalf of appellant were sufficient to subject appellant to the state Business & Occupation Tax. The court further stated that *Norton* could be distinguished in that the Supreme Court concluded the activities of the Norton engineers were not decisive in holding the exempt "direct sales market", while this court concluded Martinson's activities were decisive factors in holding the Boeing "direct sales market".

What this court overlooked in its opinion is that *the activities of Martinson differed in no material respect from those activities and services performed by the Norton engineers on the exempt direct sales.* If the Supreme Court held that those activities were not decisive, similarly, Martinson's activities and services should also be held to be not decisive factors in holding or establishing the market.

2. Based on the *Norton* case, the six enumerated services listed by this court are not sufficient local incidents on which to impose the tax.

On page 5 of its opinion, this court listed six services which were said to be performed by Martinson on behalf of appellant. A review of the *Norton* decision shows that these enumerated services were basically those services performed by the Norton engineers, which the Supreme Court held were not sufficient local activities on which to impose the tax. For example, the Norton Co. engineers consulted with prospective customers as to their needs. This can be compared to Martinson's activities in becoming aware of products which the Boeing Co. might be able to use and securing the Boeing design drawings for such products. As far as securing the testing of sample products, the record shows that the decision to test was made by personnel in appellant's out-of-state plants, and in no way was involved in the qualification process (Martinson Dep. 14, 20). Both the Norton engineers and Martinson assisted in resolving problems experienced by the customer in the use of the product, and certainly, the Norton engineers were concerned with obtaining and retaining good will and working rapport with customers. Appellant submits

that based on the similarity of their activities, the *Norton* decision compels a holding that Martinson's activities were not sufficient local incidents on which to base taxation.

3. The Norton engineers did perform services on the exempt direct sales.

On page 8 of its opinion, this court stated that *Norton* held merely that a tax may not be levied upon proceeds from sales with which the local outlet had nothing to do, citing *B. F. Goodrich Co. v. State,* 34 Wn.2d 663 (1951). If by this statement, the court intends to say that the Norton engineers did not perform services on exempt sales, appellant respectfully submits the *Norton* case as not being read correctly. First of all, the *Norton* decision does not say that the local outlet performed no services in connection with the exempt sales. Further, there is nothing in the opinion to support the court's apparent conclusion that the engineers were, in fact, part of the Chicago outlet. On this point, the *Norton* opinion in defining the services of the Chicago outlet did not mention any engineering services being performed out of the Chicago office; therefore, even if the court should conclude that the local outlet had nothing to do with the exempt sales, that does not mean in turn that the Norton engineers were not performing services on those sales.

A careful reading of the *Norton* decision further shows that the only reasonable conclusion one could draw is that the engineers did perform their usual services in connection with the direct sales. (See appellant's reply brief, 2 thru 4).

DATED this 20th day of December, 1973.

s/ KENNETH L. CORNELL
Of Attorneys for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STANDARD PRESSED STEEL COMPANY, *Appellant*, v. DEPARTMENT OF REVENUE, STATE OF WASHINGTON, *Respondent*.	No. 1022-II ORDER DENYING PETITION FOR REHEARING OR MODIFICATION

The court has considered this petition for rehearing or modification and has determined that it should be denied. Accordingly, it is

ORDERED that the petition is denied.
DATED this 3rd day of January, 1974.

VERNON R. PEARSON
Chief Judge

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STANDARD PRESSED STEEL CO., *Appellant*, v. DEPARTMENT OF REVENUE, *Respondent*.	No. 42593-1022-II PETITION FOR REVIEW

I
STATEMENT OF FACTS

Appellant, Standard Pressed Steel Co., is a foreign corporation with production facilities located in Jenkintown, Pennsylvania and Santa Ana, California. A significant amount of appellant's business involves the manufacture and sale of fasteners (nuts and bolts generally) to be used in the aerospace industry, and appellant's principal customer in this state during the tax years in question was The Boeing Company in Seattle.

The only employee of Standard Pressed Steel present within the State of Washington over the tax years in question was H. Robert Martinson. Martinson performed his activities for Standard Pressed Steel out of a portion of one room in his home equipped with a desk, telephone, and a file cabinet.

Martinson's primary function was to inform himself of possible prospective needs of The Boeing Company for aerospace fasteners through contact with Boeing engineers and its various subcontractors. Martinson would then relay this information to appellant's out-of-state offices on a form entitled "Product Engineering Request", which described in detail the Boeing specifications. After receiving

this information from Martinson, appellant would then make the decision as to whether or not Standard Pressed Steel would attempt to "qualify" as a Boeing supplier of a particular fastener; that is, Boeing determined who could be a supplier of component parts by qualification tests done by Boeing at its Seattle facilities. If appellant should decide to attempt to qualify as a supplier, the company would manufacture sample qualification pieces and forward these directly to Boeing for qualification tests. If the fasteners met the required specifications, Standard Pressed Steel would become an "approved source", and the Boeing Company would then enter into direct negotiations with appellant's out-of-state offices for purchase of the fasteners, which negotiations might or might not culminate in a sale.

Martinson was not consulted in any way either by Boeing or appellant's out-of-state offices in the qualification process and Martinson was not consulted by appellant in arriving at its decision as to whether or not to attempt to qualify. Martinson's only function in this entire process was to relay to appellant's out-of-state offices the information concerning Boeing's possible needs. From that point on, all dealings and negotiations were carried on directly between Boeing and appellant's out-of-state offices. Martinson was by-passed completely, except to the extent that he periodically informed the appellant of the identity of various subcontractors, purchasing specialists, and control buyers of commodities, for which Standard Pressed Steel was an approved source. Martinson had nothing to do with quoting prices, delivery dates, receiving, soliciting, accepting orders, handling shipments, or approving credit. No inventories were kept in this state, and all deliveries were made by appellant directly through a common carrier.

The above qualification process consumed approximately 80% to 90% of Martinson's time, with the remainder devoted to "troubleshooting". If Boeing experienced any problems in its use of the fasteners supplied by the appellant, Martinson's duties were to relay this information to appellant's engineers at the out-of-state offices, and there the engineers would work to resolve any difficulties with the product in their laboratories. The engineers would then forward their solution to Martinson, who would present the proposed solution to Boeing's engineers in Seattle. In addition, approximately three days every six weeks, Martinson would set up meetings between Boeing engineers and visiting groups of appellant's engineers to visit and discuss engineering problems.

Based on the above activitiy within the State of Washington, the state contends that Standard Pressed Steel Co. is subject to the Business & Occupation Tax measured by gross receipts from appellant's sales to The Boeing Company.

II

QUESTIONS OF LAW INVOLVED

1. Whether the assessment of the Business & Occupation Tax on appellant's gross sales to Boeing is a violation of the commerce clause of the federal constitution.

2. Whether the assessment of the Business & Occupation Tax on appellant is a violation of the due process clauses of the federal and state constitutions.

III

JURISDICTIONAL STATEMENT

A. *Introduction*: On December 3, 1973, the Washington Court of Appeals, Division II, filed its opinion in the above-

referenced appeal. On January 3, 1974, that same court denied appellant's petition for rehearing.

This court should assume jurisdiction, as (1) the opinion of the Court of Appeals is in conflict with *B. F. Goodrich Co. v. State*, 34 Wn.2d 663 (1951); *General Motors Corp. v. State*, 60 Wn.2d 862 (1962), aff'd. 377 U.S. 436, 84 S. Ct. 1564 (1964); *Norton Co. v. Dept. of Revenue*, 340 U.S. 534, 95 L. Ed. 517, 71 S. Ct. 377 (1951); and *McKinnis Travel Service v. State*, 78 Wn.2d 229 (1970); (2) the assessment of the Business and Occupation Tax on appellant violates the state and federal due process requirements and the commerce clause prohibition of the federal constitution, and (3) the opinion of the Court of Appeals below is a radical extension of the taxing power of the State of Washington, and the issues before this court affect many and numerous businesses besides appellant and affects the taxing powers of the state.

The presentation which follows will not discuss the above-stated reasons for jurisdiction separately, as they cannot properly be separated out for discussion. Rather, all of the above-stated reasons why this court should assume jurisdiction will be expanded on under one general heading of Statement of the Law.

B. *Statement of the Law*: In its opinion, the Court of Appeals held that appellant's activities constituted a sufficient, peculiarly local and distinct taxable incident within the State of Washington such that the imposition of the tax did not violate the interstate commerce limitations of the federal constitution, and that the measure of the tax was reasonably related to those local incidents so that due process was not violated. Appellant respectfully submits that

this holding is in conflict with the decisions of *Norton Co. v. Dept. of Revenue, supra, B. F. Goodrich Co. v. State, supra,* and *General Motors Corp. v. State, supra.*

The record in this case is clear that the only in-state activity of appellant consisted of Martinson's (1) consulting with Boeing as to its potential needs, and (2) offering a measure of technical engineering assistance and advice. Based on *Norton Co. v. Dept. of Revenue, supra,* the tax based on these activities is unconstitutional.

The facts in *Norton* show that the Norton Co. was a producer of industrial grinding wheels and abrasive materials used in manufacturing. The Norton Co. maintained a large sales office and warehouse in Chicago and made over the counter sales to customers, which the Norton Co. admitted were subject to the state Business & Occupation Tax. The Norton Co. did, however, challenge the imposition of the occupation tax measured by gross sales to Illinois customers on four different classes of sales, alleging in part that the in-state activities as to those sales were not sufficient to justify the tax. The Supreme Court held that as to three of these four classes of sales in question, the tax was proper and constitutional. As to sales resulting from direct orders being placed by customers with Norton's out-of-state offices, with the only in-state activity being that performed by Norton's resident, liaison engineers, the in-state activity of Norton's engineers was held not sufficient to justify the imposition of the tax.

It is clear from *Norton* that as to that class of sales to Illinois customers held to be non-taxable, such as exists in the present case, the only in-state activity associated with the sales in question was performed by resident, liaison

engineers. It is also clear that the services of the Norton Co.'s corps of liaison engineers were directly associated with those sales to Illinois customers held by the court to be non-taxable. It is also clear that the activities performed by the Norton Co. engineers are the same as those activities performed by appellant's resident engineer, that is, (1) consulting with customers as to their potential needs, and, (2) offering technical engineering assistance and advice. In *B. F. Goodrich Co. v. State, supra,* this court in discussing the *Norton* decision made the following observation:

> No salesmen were employed by the company in Illinois, *but it did have a group of engineers available to consult with prospective customers as to their needs.* These engineers did not solicit or take orders for goods. (Emphasis added). 34 Wn.2d at 670.

The Supreme Court in *Norton* further observed that these engineers in their consulting work offered technical and engineering assistance and advice to customers.

A review of the present records shows that Martinson's primary duties were the same as those of the Norton engineers. Clearly, on the authority of *Norton,* which was deemed to be controlling by this court in *B. F. Goodrich, supra,* the State of Washington cannot constitutionally subject appellant to the state Business & Occupation Tax. If an out-of-state company, with an extensive local sales office, cannot be taxed on its direct orders to the manufacturer, and the company maintains a corps of resident, liaison engineers to consult with the customers who ordered direct, clearly under the facts of the present case, where there is no local sales activity of any kind, and no local outlet, all sales being of the direct order type, appellant cannot constitutionally be subject to the Business & Occupation Tax.

The Court of Appeals below distinguished *Norton* on the basis that the Supreme Court in the *Norton* decision concluded that the activities of the Norton engineers were not decisive in holding the exempt "direct sales market", while the Court of Appeals concluded that Martinson's activities were decisive factors in holding the Boeing "direct sales market". What the court overlooked in this conclusion is that the activities of Martinson differed in no material respect from those activities and services performed by the Norton engineers on the exempt direct sales. The court below listed six services which were said to be performed by Martinson on behalf of appellant. A review of the *Norton* decision shows that these enumerated services were basically those services performed by the Norton engineers, which the Supreme Court held were not sufficient local activities on which to impose the tax. For example, the Norton Co. engineers consulted with prospective customers as to their needs. This can be compared to Martinson's activities in becoming aware of products which The Boeing Company might be able to use and securing the Boeing design drawings for such products. As far as securing the testing of sample products, the record shows that the decision to test was made by personnel in appellant's out-of-state plants in no way was Martinson involved in the qualification process. Both the Norton engineers and Martinson assisted in resolving problems experienced by the customer in the use of the product, and certainly, the Norton engineers were concerned with obtaining and retaining good will and working rapport with customers. Appellant submits that based on the similarity of their activities, the *Norton* decision compels a holding that Martinson's activities were not sufficient, local incidents on which to base taxation.

The court below further attempted to distinguish *Norton* by stating that *Norton* held merely that a tax may not be levied upon proceeds from sales with which the local outlet had nothing to do, citing *B. F. Goodrich Co. v. State*, 34 Wn.2d 663 (1951). If by this statement, the court intends to say that the Norton engineers did not perform services on exempt sales, appellant respectfully submits the *Norton* case is not being read correctly. First of all, the *Norton* decision does not say that the local outlet performed no services whatsoever in connection with the exempt sales. Further, there is nothing in the opinion to support the court's apparent conclusion that the engineers were, in fact, part of the Chicago outlet. On this point, the *Norton* opinion in defining the services of the Chicago retail outlet and warehouse did not mention any engineering services being performed out of the Chicago outlet; therefore, even if the court should conclude that the local outlet had nothing to do with the exempt sales, that does not mean in turn that the Norton engineers were not performing services on those sales. A careful reading of the *Norton* decision further shows that the only reasonable conclusion one can draw is that the engineers did perform their usual services in connection with the direct sales. Appellant relies on the following as conclusive on this point.

(1) The Washington Supreme Court in *B. F. Goodrich Co. v. State*, 38 Wn.2d 663, 670, 231 P.2d 325 (1951), stated that:

> No salesmen were employed by the company in Illinois, but it did have a group of engineers available to consult with prospective customers as to their needs. *These engineers did not solicit or take orders for goods.* (Emphasis added)

The reference to the fact that the Norton engineers did not solicit or take orders would only be significant and meaningful if the engineers performed services associated with exempt sales. This follows from the fact that the Chicago retail outlet and warehouse performed services on all but exempt sales and these services, in and of themselves were sufficient to justify taxation. It is, therefore, only on those direct sales held to be exempt that the reference to the non-involvement of the engineers and solicitation or order-taking would be relevant. There is no other reasonable explanation for the court's reference to the fact that these engineers did not solicit or take orders except that the group of engineers performed services associated with exempt sales.

(2) The Washington Supreme Court in *B. F. Goodrich, supra*, and the United States Supreme Court in *Norton*, both noted that the Norton engineers consulted with prospective customers as to their needs and offered technical and engineering advice on the Norton products. Picture these engineers in their office, available to consult with a customer. A customer, or a prospective customer, contacts one of these engineers with an engineering problem, or wants to consult with an engineer concerning the Norton products. Contrary to respondent's interpretation of *Norton*, it is certainly not reasonable to assume that prior to consulting with the customer, or prospective customer, the engineer would inquire of the customer as to whether the customer was placing his order direct to Massachusetts and receiving shipment back, in which case, the engineer would decline to render services, or whether the customer expected the help of the Chicago retail outlet and/or warehouse in this sale, and if so, to what extent. And what

would the engineer do if the customer had not yet decided how the order would be placed? And further, such an inquiry would only be relevant after the *Norton* decision in any event, unless we are to assume further that the Norton Company and its engineers were able to predict the outcome of the *Norton* decision.

(3) There is nothing in the *Norton* opinion which states or implies that these engineers were not offering engineering assistance to customers involved in direct sales. On the contrary, the *Norton* opinion describes the engineers as providing engineering services to customers without limitation. If, in fact, the Norton Co. engineers did not provide engineering assistance to a certain class of customers, such a critical fact would certainly have been mentioned by the court in its opinion.

Based on the above, it is clear that the Norton Co. engineers performed services in connection with sales held to be exempt from taxation.

Appellant's reading of the *Norton* case is in accord with *General Motors Corp. v. State, supra,* where this court stated that "taxation of those who perform de minimus activities through a local office would be unreasonable and unjust" (60 Wn.2d at 874). This court further stated that the presence or absence of a local office does not in and of itself decide the question, and, therefore, taxation of a corporation who maintains even a formal local office may nevertheless violate due process. This court observed in this regard that:

> The essential inquiry must be directed to the *amount and effect* of the activities involved and not the form of the operations. 60 Wn.2d at 874. (Emphasis added)

In addition to the due process violations outlined above,

the assessment of the tax on appellant also is taxation of sales in interstate commerce in violation of the interstate commerce clause in the federal constitution. As stated by the United States Supreme Court in *Norton,* the direct sales which were filled by shipments directly to the customer, with the only in-state involvement being the activities performed by the liaison engineers, were within the protection of the commerce clause being sales in interstate commerce and, therefore, were sales which were not subject to the Illinois privilege tax.

In *McKinnis Travel Service v. State,* 78 Wn.2d 229, 232 (1970), this court held that the following tests represent the guidelines to be employed in judging the state's power to levy a gross receipts tax on activities connected with interstate commerce:

> (1) Whether the tax places an extra burden on interstate commerce not borne by intrastate commerce, or erects barriers, placing out-of-state businesses at a disadvantage when competing locally; the discrimination text. (2) Whether the interstate commerce involved is subject to the risk of repeated exactions of the same nature from other states; the multiple burden test.

In the case at bar, on the authority of *Norton Co. v. Dept. of Revenue, supra,* the significant taxable incidents occurred outside of the State of Washington. There is no local outlet; all significant incidents of the sale and delivery take place in either California or Pennsylvania; appellant owns no property in the State of Washington; all inventories are maintained outside of the state; all of the negotiations concerning the sale to Boeing are conducted from appellant's home or branch offices; and coordination between appellant and Boeing in the qualification process is conducted by appellant through its out-of-state offices en-

tirely. Not only is there a substantial risk of multiple tax burdens, it would appear that Pennsylvania and California may be the only states who can tax the privilege of appellant's sales to Boeing, and, therefore, the sales to Boeing are exempt from the Washington Business and Occupation Tax. The burden on appellant here, as stated in *McKinnis Travel Service v. State, supra,* is to:

> . . . affirmatively show that the plaintiffs (appellants) are taxable elsewhere . . . 78 Wn.2d at 233.

The burden, therefore, is not to show that appellants, in fact, are taxed elsewhere, but merely that the taxable situs is located elsewhere. Appellant contends that the record clearly shows that the taxable situs for a privileged tax on sales to Boeing is in Pennsylvania or California, and, therefore, respondent's imposition of the Business Occupation Tax on appellant creates the risk of a multiple burden on appellant's interstate commerce.

The opinion filed by the Court of Appeals below is a radical extension of *General Motors Corp. v. State, supra,* which could not have been contemplated by either this court or the United States Supreme Court. If the decision of the Court of Appeals is allowed to stand, any business which has a "resident employee" in this state, for whatever purpose, and regardless of the amount and effect of the activities of said employee, would be subject to the Business and Occupation Tax.

IV
OPINION

A copy of the opinion of the Court of Appeals, dated December 3, 1973, is attached hereto.

Respectfully submitted this 15th day of January, 1974.

s/ KENNETH L. CORNELL
Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STANDARD PRESSED STEEL CO., *Appellant,* v. DEPARTMENT OF REVENUE, *Respondent.*	No. 43099 REPONDENT'S ANSWER TO PETITION FOR REVIEW

Appellant requests this court to take jurisdiction of this matter (referred by this court on March 2, 1973, to the Court of Appeals) upon the grounds that (1) the opinion of the Court of Appeals violates the state and federal due process requirements and the commerce clause prohibition of the federal constitution; and (2) the opinion is in conflict with *B. F. Goodrich Co. v. State,* 38 Wn.2d 663, 231 P.2d 325 (1951); *General Motors Corp. v. Washington,* 60 Wn.2d 862, 376 P.2d 843 (1962), aff'd., 377 U.S. 436, 12 L.Ed.2d 430, 84 S.Ct. 1564 (1964); *Norton Co. v. Department of Revenue,* 340 U.S. 534, 95 L.Ed. 517, 71 S.Ct. 377 (1951); and *McKinnis Travel Service v. State,* 78 Wn.2d 229, 472 P.2d 392 (1970).

To substantiate its claim that the Court of Appeals' opinion is in error and should be reversed by this court, the appellant purports to compare the facts in this case concerning its wholesaling activities in this state, with the facts pertaining to the exempt retail sales in the *Norton* case and demonstrate by this comparison that *Norton, Goodrich,* and *General Motors* specifically support its claim for tax immunity.

While respondent believes that the opinion of the Court of Appeals and its answering brief adequately refute ap-

pellant's claim, respondent wishes to emphasize here the complete lack of any factual basis for appellant's claim.

It is the respondent's position that appellant's claim of constitutional immunity is based on at least three fundamental errors, namely: (1) An incomplete statement and a misconstruction of the significance and operative effects of the facts pertaining to its wholesaling activities in this state; (2) A misstatement of the facts in *Norton* pertaining to Norton engineers and on wholly unsupportable inferences concerning the nature and extent of the Norton engineers' activities in Illinois concerning the exempt Norton sales; and (3) On an erroneous interpretation and application of the rules of law established in the *Norton*, *Goodrich* and *General Motors* decisions.

A comparison of the facts in this case, with the facts in *Norton* pertaining to the exempt *Norton* sales, clearly demonstrates that the Court of Appeals did not err by finding that the case at bar is distinguishable from *Norton*.

Without referring to the record in this cause and the specific findings of fact by the Court of Appeals, and without referring to the record or opinion in *Norton*, the appellant's petition is primarily devoted to drawing unsupportable factual analogies between the facts of this cause and the facts in *Norton* pertaining to *Norton* exempt sales. The petitioner's characterization of and significance and operative effect of the facts in this cause, as compared to the facts in the *Norton* case, *supra*, concerning the exempt *Norton* sales has not only been rejected by the Court of Appeals, but also by the trial judge and the Board of Tax Appeals. Each of these entities arrived at this result after an independent examination of the record in this cause and *Norton*.

In order to show that the findings of fact and conclusions of law as found by the Board of Tax Appeals and the trial court were supported by the record in this cause, the respondent set forth in its answering brief in the Court of Appeals what it deemed to constitute the facts in this cause, with references, where applicable, to the deposition (including exhibits) of appellant's Washington based employee Mr. Martinson, the Board's decision and order and the transcript in this cause. For convenient reference, that statement of facts set forth on pages 5-7 of respondent's brief is attached to this answer as Addendum A.

An examination of this statement shows that the Court of Appeals did not err in making the following findings:

> "Here the record clearly discloses that Standard Pressed Steel Company employed Mr. Martinson as a resident agent within this state to conduct business activities with the Boeing Company, in part out of his Washington residence as an office, so that Standard Pressed Steel could: (1) become aware of which of its products the Boeing Company might be able to use; (2) secure the testing of sample products to qualify the products for sale to the Boeing Company; (3) obtain the engineering designs for such products; (4) resolve problems in the use of the products after receipt and use by the Boeing Company; (5) obtain and retain goodwill and working rapport with Boeing personnel; and (6) secure and update lists of Boeing purchasing specialists or control buyers, and the commodities for which they are responsible, for the use of the personnel at the plaintiff's home office.
>
> "We are of the opinion that the foregoing substantial services constituted a sufficient peculiarly local and distinct taxable incident within the State of Washington such that imposition of the business and occupation tax was not on the privilege of engaging in interstate commerce, but rather on the privilege of doing

local business."[1] (Opinion of Court of Appeals, pp. 5-6)

• • •

"We are satisfied that the local activities of Mr. Martinson were instrumental in establishing and maintaining the Boeing Company as a market for the sales giving rise to the proceeds by which the state seeks to measure this tax. We therefore conclude that because the gross receipts from plaintiff's sales to the Boeing Company were reasonably related to the local incidents of the tax, imposition of the business and occupation tax here was not offensive to due process."[2] (Opinion of Court of Appeals, p. 8)

There is absolutely no evidence in the *Norton* record or language in the *Norton* decision that indicate any comparable facts or factual findings or conclusions were involved in *Norton*.

The only reference in the Supreme Court decision to Norton's engineers is the following:

1. The Board of Tax Appeals, in its order and final decision in this cause (Docket No. 74-41) and the trial judge in his oral decision and findings of fact made findings of fact comparable to that of the Court of Appeals.

2. This conclusion is identical in substance with the conclusion found by the trial court and comparable to the conclusion arrived at by the Board of Tax Appeals wherein it stated in regard to its factual findings: "We find that these factors were a necessary and vital part in the appellant's ability to gain its market with The Boeing Company in this state in the first instance and to hold its market with Boeing in the second. We find that without these factors, secured through the person of Mr. Martinson, or by some other qualified agent or agency of the appellant in this state, it is very unlikely the appellant could have secured or retained The Boeing Co. as its customer. We find that Mr. Martinson's activities, although not directly concerned with the writing of a sales order, the making of delivery, or the procurement of payment, constituted all the activities of selling necessarily preliminary to the writing of orders. We find the sales activities of Mr. Martinson to be of such importance that the writing of the orders and subsequent activities of delivery and payment are only the end result of his intensive and extensive activities and the activities of the visiting groups of appellant's engineers in this state."

". . . But no solicitors work the territory out of either the home office or the Chicago branch, although petitioner will supply engineering and technical advice. . . ."

The only evidence in the record in the *Norton* case concerning engineering activities was the following testimony set out on page 20 of the transcript of record, concerning activities out of the Chicago office of Norton:

". . . we have abrasive engineers who go out to the customer and advise him on technicalities of grinding wheels, what wheels would perform the work, etc.; the engineers go in the field after the order is in; they do not solicit; it is just technical advice; we have no men in the field from the Chicago office taking orders; . . ."

The Supreme Court of Illinois in *Norton Co. v. Department of Revenue*, 405 Ill. 314, 90 N.E.2d 737 (1950) in reference to the engineers stated:

"There are no salesmen used by appellant, but it does have a group of engineers available to consult with prospective customers on their needs. These engineers do not solicit or take orders for goods."[3]

There is no evidence or judicial statement in *Norton* that associated the Norton engineers' activities with any exempt sales in *Norton*.

Since the Supreme Court held in *Norton* that any exempt sales must be disassociated from local activities, the Supreme Court predicated its decision on the assumption that the activities of Norton engineers did not constitute local business associated with the exempt sales.

Appellant's statement on page 5 of its petition that "It

3. This court in *B. F. Goodrich Co. v. State*, *supra*, repeated this language from *Norton* in its discussion of *Norton* (38 Wn.2d 663 at 670, quoted on page 5 of appellant's petition).

is also clear that the services of the Norton Co.'s corps of liaison engineers were directly associated with those sales to Illinois customers held by the court to be non-taxable" is unsupportable by the record and opinion in *Norton*.[4]

From the foregoing, it is self-evident that *Norton* facts concerning the exempt sales are readily distinguishable from the facts in the case at bar. As found by the Court of Appeals, the trial court, and the Board of Tax Appeals, the appellant's activities in Washington far exceed merely making engineers available to Boeing for consultation. They constituted decisive factors in appellant establishing and maintaining Boeing as a market for its products. In no sense can they be characterized as de minimis as to appellant's wholesale sales to Boeing.

Under these circumstances, it is error for the appellant to argue, on authority of *Norton*, *Goodrich* or *General Motors* that its Washington activities are inadequate (i) to establish taxable nexus (Washington jurisdiction to impose its B&O tax on appellant's Washington wholesaling activities) or (ii) to permit the tax in question to be measured by gross receipts derived from Boeing within the purview of commerce clause limitations.

In *Goodrich*, this court noted:

> "We only interpret the *Norton Co.* case as holding that such a tax [a business privilege tax] may not be levied upon the proceeds from sales with which the local outlet had nothing to do." (38 Wn.2d 675)

4. For a proper interpretation of the facts and holding in *Norton*, the dissenting opinion of Mr. Justice Clark is instructive. He concluded that the direct sales under the test laid down by the court in *Norton* should also be taxable because the taxpayer had not established that the services rendered by the Chicago office were not decisive factors in establishing and holding the Illinois market for Norton's direct sales. Obviously, a majority of the court thought otherwise.

General Motors makes it crystal clear that the B&O tax on wholesaling is valid if the taxpayer's activities in the taxing state are decisive factors in establishing and holding the wholesale market and the taxpayer has not disassociated the wholesale sales from these activities. This accords with the express holding in *Norton*. Any so-called de minimis rule either as to due process tax jurisdiction or as to the measure of the tax is inapplicable where the taxpayer exercises substantial and decisive wholesale activities in the state of destination and these activities have not been disassociated from the wholesale sales used as a measure of the tax liability.

In the language of *Norton*:

> "But when, as here, the corporation has gone into the State to do local business by state permission and has submitted itself to the taxing power of the State, it can avoid taxation on some Illinois sales only by showing that particular transactions are dissociated from the local business and interstate in nature. The general rule, applicable here, is that a taxpayer claiming immunity from a tax has the burden of establishing his exemption." (340 U.S. 537)

In *General Motors, supra,* after analyzing the general principles applicable and the facts pertaining to General Motors activities in Washington, the Supreme Court concluded:

> ". . . we can only 'conclude that, in the light of all the evidence, the judgment attributing . . . [the corporation's Washington sales to its local activity] was within the realm of permissible judgment. Petitioner has not established that such services as were rendered . . . [through in-state activity] were not decisive factors in establishing and holding this market.'" (Material quoted by the Supreme Court was from *Norton Co., supra,* at 340 U.S. 538)

Inasmuch as the facts establish that appellant came into the state of Washington to do a local business in connection with its wholesale sales and that this activity is clearly associated with its wholesale sales in this state, *Norton, Goodrich* and *General Motors* are dispositive of this case and establish the correctness of the decision of the Court of Appeals. These cases indicate that there is no merit to either appellant's due process of law or commerce clause arguments.

Appellant's reliance on *McKinnis Travel Service, supra,* and its argument that the state of origin can tax the wholesale sales in question with the result that these sales are exposed to multiple taxation is equally unfounded. Appellant cites no authority nor is respondent aware of any that establishes that the state of origin has jurisdiction to tax the sales in question. As stated by the Court of Appeals, *General Motors, supra,* and *Washington-Oregon Shippers Cooperative Association, Inc. v. Schumacher,* 59 Wn.2d 159, 367 P.2d 112 (1961) is dispositive of this issue.

CONCLUSION

The appellant's claim that the Court of Appeals decision is contrary to controlling judicial precedent stems primarily from its failure to properly analyze and give proper weight to the *facts* of this cause. In essence it argues that even though it conducts an intrastate business in this state which was carried on solely in connection with its wholesale sales in question and even though this business was necessary for it to make these wholesale sales, nevertheless it is constitutionally exempt from the B&O tax on wholesaling. No authority supports this novel interpretation of either due process of law or interstate commerce

limitations on a state's taxing power. It is therefore respectfully submitted that this court should decline to take jurisdiction of this matter.

DATED this 25th day of January, 1974.

SLADE GORTON
Attorney General

/s/ WILLIAM D. DEXTER
Assistant Attorney General
Attorneys for Respondent

ADDENDUM A

The appellant appeals only the imposition of the B&O tax upon its bolt division activities during the period in question. The bolt division is composed of three groups: aerospace, nut and umbrako (Dep. 20). The appellant, through these groups, manufactures highly specialized industrial and fastener systems (Ex. M, Dep. 21-22, BTA order 1, Tr. 4). The appellant has its manufacturing plants in Santa Ana, California, and in Jenkintown, Pennsylvania —its home office (Dep. 4, BTA order 1, Tr. 4). During the period in question, its principal customer in this state was Boeing in Seattle (Dep. 4-5, BTA order 1, Tr. 4).[1]

The appellant had Mr. Martinson, a resident employee, in the state during the period in question. Martinson was a "sales engineer" (Dep. 2, BTA order 1, Tr. 4). His supervisor was the "sales manager" (Dep. 6). His typing was done by the sales manager's secretary (Dep. 6). In training for his job, Martinson spent many weeks in the appellant's plants learning how the products were made and the general technology (Dep. 3). His training at the appellant's plants was continuous—about four trips a year to the plant for about a week or ten days at each plant. (Dep. 4).

In his home Martinson had a desk, file and telephone in a room which he used as his office (Dep. 5, BTA order 2, Tr. 5). His office was significant enough to qualify as such for federal income tax purposes (Dep. 6, BTA order 2, Tr. 5). The telephone was listed under Martinson's home address, but was used by himself and the appellant's visiting personnel for business purposes (Dep. 7-8, BTA order

1. Because the appellant treats its other customers in a similar manner but to a lesser degree, the case has been limited by agreement of counsel to the appellant's treatment of Boeing as a customer.

2, Tr. 5). An answering service was listed under the appellant which received calls for Martinson in the bolt division (Ex. K, Dep. 6-7, BTA order 2, Tr. 5).

On the job Martinson worked directly with Boeing design engineers, Standard's engineers, and project engineers (qualification engineers) (Dep. 4, BTA order 1, Tr. 4). In working with Boeing's engineers in the initial phases of aerospace design and construction, Martinson would become aware that Boeing was considering a certain fastener system (Dep. 5, BTA order 1-2, Tr. 4-5). He would initiate a products engineering request describing in necessary detail Boening's specifications and would send it to the appellant's chief engineer in Santa Ana, California (Ex. J. Dep. 20, BTA order 1-2, Tr. 4-5). If the appellant wished to qualify for Boeing's list of approved sources, samples were made by the appellant and shipped directly to Boeing for a qualification test (Ex. B, D, Dep. 14-16, BTA order 2, Tr. 5). Martinson would work with Boeing's engineers on qualification problems to make sure the appellant was a qualified source; and he would then notify the appellant if it had indeed so qualified (Ex. B, Dep. 3-14, BTA order 2, Tr. 5). Martinson informed the appellant of the subcontractors and the purchasing specialists or control buyers of each commodity for which it was a qualified source. (Ex. A, E-1, Dep. 17-19, BTA order 3, Tr. 6). He supplied the sales manager and other personnel of the appellant with a list of competitive prices at Boeing with explanations as to stock and delivery terms (Ex. A). Martinson neither placed nor accepted orders; therefore, Boeing placed its order directly with the appellant (Dep. 26, BTA order 2-3, Tr. 5-6). The appellant through its out-of-state offices, negotiated price and delivery date, accepted orders,

handled shipments and approved any credit (BTA order 2-3, Tr. 5-6). Martinson received a copy of each sales invoice (Dep. 25, BTA order 2, Tr. 5). Deliveries were made by the appellant directly through a common carrier (Dep. 25, BTA order 2-3, Tr. 5-6). No inventories were kept in this state (Dep. 24-25).

Once a product was sold, Martinson would work with Boeing's engineers as to any problem with the product (Dep. 10, BTA order 1-3, Tr. 4-6). The problem-solving process, including suggestions or modifications, was handled by Martinson with the appellant in much the same way as the qualification process (Dep. 10-13, BTA order 2, Tr. 5). The qualification process consumed 80 or 90 percent of Martinson's time, while the remainder was consumed by the problem-solving process (Dep. 26-27, BTA order 2, Tr. 5).

In addition to his product-oriented activities, Martinson performed public relation services, such as the arrangement for a hospitality room at a meeting of the Society of Aerospace and Process Engineers, which included Boeing engineers (Ex. C, Dep. 15, BTA order 2, Tr. 5). All expenses were sent directly to the home office (Dep. 15, 25-26). Martinson would also set up meetings between Boeing engineers and visiting groups of engineers of the appellant (Dep. 9, BTA order 2-3, Tr. 5-6). These visiting engineers were application engineers, coding engineers and general engineers who visit about three days every six weeks to discuss problems relating to the appellant and Martinson's activities with Boeing (Dep. 8-9, BTA order 2-3, Tr. 5-6).

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STANDARD PRESSED STEEL COMPANY, *Petitioner,* v. THE DEPARTMENT OF REVENUE, *Respondent.*	No. 43099 (1022-II) ORDER DENYING PETITION FOR REVIEW

The Court having considered the petition for review of the decision of the Court of Appeals in this cause together with the answer thereto,

It is ordered that the petition be and it is hereby denied.

Dated this 20th day of February, 1974.

By the Court:

/s/ FRANK HALE
Chief Justice

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON

STANDARD PRESSED STEEL CO., *Appellant,* v. DEPARTMENT OF REVENUE, *Respondent.*	REMITTITUR No. 1022-II THURSTON COUNTY No. 44750

The State of Washington to: The Superior Court of the State of Washington in and for Thurston County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on December 3, 1973, became the final judgment of this court in the above entitled case on February 20, 1974. This cause is remitted to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule 55 on Appeal, costs are taxed as follows:

Six hundred twenty two dollars and 76/100 ($622.76) in favor of respondent and against appellant and against appellant's surety not to exceed the limit of the surety bond.

Petition for Rehearing denied January 3, 1974.

Petition for Review denied February 20, 1974.

CC TO:
Kenneth L. Cornell
Slade Gorton
Clerk of Supreme Court
Reporter of Decisions

[SEAL]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 21st day of February, A.D. 1974.

/s/ LAURENCE P. GILL
Clerk of the Court of Appeals, State of Washington, Division II.

[Affidavit of Service omitted in printing]

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STANDARD PRESSED STEEL CO., a foreign corporation, *Appellant,* v. DEPARTMENT OF REVENUE, *Appellee.*	No. 1022-II NOTICE OF APPEAL

To: Department of Revenue, State of Washington, Appellee

AND TO: Slade Gorton, Attorney General, and William D. Dexter, Assistant Attorney General, attorneys for appellee

AND TO: The Clerk of the Above Entitled Court

YOU AND EACH OF YOU are hereby notified that appellant Standard Pressed Steel Co., a foreign corporation, being aggrieved by reason of the opinion of the Court of Appeals of the State of Washington, Division II, filed on December 3, 1973, which became a final judgment on February 20, 1974, does hereby appeal to the Supreme Court of the United States from that certain opinion made, rendered and entered in this court and cause on the 3rd day of December, 1973 and which became final judgment of this court in the above entitled case on February 20, 1974, and from each and every part of said opinion and judgment adverse to the appellant. On the basis that the Business & Occupation Tax statutes of R.C.W. 82.04 are repugnant to the United States Constitution as applied to appellant and as construed by the court, appellant takes this appeal pursuant to 28 U.S.C. §1257(2).

DATED this 12th day of March, 1974.

s/ HAROLD S. FARDAL
Of Attorneys for Appellant

STATE OF WASHINGTON
BOARD OF TAX APPEALS

STANDARD PRESSED STEEL COMPANY, *Appellant,* v. THE DEPARTMENT OF REVENUE, *Respondent.*	70-41 Re: EXCISE—BUSINESS & OCCUPATION TAX

DEPOSITION UPON ORAL EXAMINATION OF
ROBERT MARTINSON

APPEARANCES:

For the Appellant: ROBERT K. KELLER, ESQ.
1220 IBM Building
Seattle, Washington

For the Respondent: SLADE GORTON, Attorney General
of the State of Washington by
MICHAEL B. HANSON,
Assistant Attorney General,
State of Washington
Temple of Justice,
Olympia, Washington

March 30, 1971
Seattle, Washington — [2]

BE IT REMEMBERED, that on March 30, 1971, at 2:00 o'clock p.m., at 1220 IBM Building, Seattle, Washington, before SUE MASTER, Notary Public in and for the State of Washington, appeared ROBERT MARTINSON, the witness herein;

WHEREUPON, the following proceedings were had, to-wit:

ROBERT MARTINSON,
being first duly sworn by the Notary
Public to tell the truth, the whole
truth and nothing but the truth,
deposed and said as follows:

DIRECT EXAMINATION

By Mr. Hanson:

Q Would you state your full name.

A Robert Martinson.

Q Mr. Martinson, where do you reside?

A Federal Way, Washington.

Q And how long have you resided in that area?

A Four years.

Q Four years. What is your capacity with the taxpayer in this case, Standard Pressed Steel?

A I was a former employee of theirs.

Q And what was your job title in that capacity with them?

A Sales Engineer.

Q What is your educational background?

A Animal husbandry in college.

[3] —

Q What school was that?

A California State Polytechnic.

Q Are you a member of any professional societies?

A No.

Q In the conduct of business in your job, were you required to have any knowledge of engineering techniques and engineering terminology?

A Yes.

Q To what extent?

A The majority of my job was working with engineers at Boeing to keep Standard Pressed Steel informed of new products as they were going to be used for the airplanes, or problem areas to make sure that we were qualified as a source to supply Boeing with these parts at the time it came up that they would

be purchased, and to just generally work with the engineers in the capacity of a man out in this area.

Q In dealing with these engineers, and in dealing with their—shall we say shop talk, was there any training? What training did you go through to engage in this type business?

A We spent many weeks within our own organization at our plants, going right out in the shop and learning how things were made, spending time with our engineers, getting the general technology of the products we were using.

— [4]

Q About how long would this type training last?

A It was a never ending type thing. We would go back and—sometimes we would—we have two plants, one in Los Angeles and one in Jenkintown.

Q That is Pennsylvania?

Mr. Keller: Yes, it is J-e-n-k-i-n-t-o-w-n.

A (continuing) I would probably make four trips a year to each of the plants, and spend maybe a week or ten days at each plant.

Q This is repetitious to a certain extent, but could you describe for me the type of employees with which you worked at Boeing Airplane Company?

A The design engineers, the standards engineers, the project engineers. I am trying to think of what they call that—it is the qualification engineers.

Q Mr. Martinson, did you service or did you represent Standard Pressed Steel in regard to any other customers other than Boeing Airplane Company in the State of Washington?

A No.

Q Are you aware of any other customers in the State of Washington of Standard Pressed Steel—the Bolt Division, I am referring to?

A Yes, there are several other small customers, but I was told not to spend any time with them because

[5] — the amount of business these people would give you was not worth your time.

Q For instance, who would these people be?

A Rohr, for example, in Auburn, Intercoastal Supply Company. It would be distributors of this type, small distributors who were selling to maybe some of the small manufacturers of Boeing.

Q In your dealings with Boeing as a customer, would that extend to the subcontractors of Boeing?

A No.

Q You would deal only with Boeing representatives, and not with their subcontractors?

A Right. I didn't make any calls on subcontractors.

Q In the conduct of your business, did you have an office?

A No, I had a spot in my home that I called my office.

Q Can you describe this, the extent of it?

A It was part of a room with a desk and a file and a telephone on the desk.

Q I have noticed some of your correspondence was typewritten. Who did the necessary work in that regard?

A As you will note, some of it is and some of it isn't, and depending on the workload, when I would send a report in to the home office, the girl would type it or not type it.

Q Which girl?

[6] — A Which girl?

Q Yes. You referred to the girl that typed it. Which girl was that?

A The sales manager's secretary.

Q Who was the sales manager?

A Harry Wilkinson.

Q Where is he located?

A Jenkintown, Pennsylvania.

Q And his secretary typed these typewritten ones. I assume you sent the handwritten correspondence to her, and she would type them at Jenkintown?

A That's correct.

Q So you did no typing personally, and no office work of that nature?

A Right.

Q On your Federal Income tax return, did you take a deduction for the use of you home as an office?

A Yes.

Q You mentioned you had a telephone in your home. Was the telephone under a separate listing?

A No, sir.

Q Was there any answering service in regard to that?

A We do have an answering service in the Seattle area.

Q In the Seattle area. What answering service is that?

A I don't recall. The bills were sent directly to Jenkintown. — [7]

Q Did you correspond with them in any way, other than the normal routine of telephone business?

A With the answering service?

Q Yes.

A No.

Q The answering service conducted all business, and the listing was not the listing of your home?

A No.

Q Do you remember what exchange it was listed with?

A The name of the company?

Q Well, what was the telephone exchange?

A 322-5600 was the number.

Q What is hour home number?

A VE 8-9118.

Q Did you use your home telephone number at any time regarding the conduct of your business?

A Yes. You mean did I pick it up and call somebody from Boeing?

Q No. Let me clarify the question. Did you refer your number to customers in your conduct of the business, for you to be contacted at your home directly, rather than through the answering service?

A Yes.

Q Are there any other people retained by Standard Pressed Steel, Bolt Division in the State of Washington other than yourself and the answering service? [8] —

A No.

Q Do any employees of Standard Pressed Steel, Bolt Division, come into the State of Washington other than yourself?

A Occasionally, yes.

Q What is the nature of their business?

A The majority of the time it is to work on engineering problems.

Q How long would they be here? Can you give us any estimate as to the length of time spent by these individuals in the State of Washington, and particularly in this regard, referring to the tax period of 1968 and through the majority of 1969?

A You mean the total number of days?

Q Yes, the extent of time, the months, days, weeks, whatever it would be.

A It would be days, and I would say maybe three days every six weeks.

Q Three days every six weeks. Very good. I assume Wilkinson would be one of the people who would visit?

A He did not.

Q He didn't visit?

A No, sir.

Q What type of Standard Pressed Steel employees would visit?

A Well, our application engineers, our coding engineers, and maybe some of our general engineers for a general problem. — [9]

Q What was the nature of their visits?

A To discuss problems in bolts or bolting material or codings in conjunction with the airplane that Boeing was building.

Q I assume they would all stay in the Seattle area?

A Yes.

Q When they were staying in the Seattle area, how would the customer, Boeing, contact these individuals?

A Well, I would know when they were coming, and I would know what they were coming out for, and I would set up the meetings for them.

Q There was apparently an office of Standard Pressed Steel in the State of Washington up to 1966, is that correct?

A Yes, I believe so.

Q And this office no longer exists, is that correct?

A That's right.

Q The functions that were performed by that office, where are they presently handled?

A Either in the plant at Santa Ana or in the plant at Jenkintown.

Q What functions did the office perform?

A I don't know. I wasn't here.

Q You weren't here until after that office had closed?

[10] — A Right.

Q With regard to correspondence with the home office, how frequently would you say that correspondence was?

A I am not going to say—don't put this down.

(Discussion off the record.)

A (continuing) I would try to write reports on things that were important enough that I would want—even though I talked to them on the telephone, and explained to them what was going on, I wanted to have something in writing so that at a period of time when something was not done, they couldn't come back to me and say, "Why didn't you tell us this," so it was just the important things I thought were necessary that they should do; also, the things I felt where it became something that many people would get involved in, I always wrote a letter with a copy to those people.

Q I am skipping a little bit here. I am speaking now of a product by Standard Pressed Steel as sold to the Boeing Company, and in the course of this product, problems arise. What function did you perform in that regard?

A I call on the engineers and find out what problems they are having with the product, and then I would go with them to the area where they are having the problems and discuss with the people out in the manufacturing line how they were installing these things, what type tooling they were using to install
[11] — these things with, and then write a report to our people, telling them what the part was and the installation methods and everything pertinent to the problem, and we would in turn try to duplicate the problem in our laboratory, and then an answer—they would come up with some type answer, and in turn

would forward the answer to me, and they would forward to me a laboratory report type form, and they would call me on the phone, and we would discuss it, and I would go and present this to Boeing.

Q I suppose some of this work you might classify as original work. It was not originally the type product you were giving to Boeing, but a new product or a new form of that product?

A Not necessarily.

Q Not in all cases?

A I guess I could qualify that by saying any time you change something on a bolt or a nut, you change the characteristics of the bolt or the nut, and for example, if you would put a different type lubricant on it, you might change the torque tension relationship. If you put a different type plating on it, you might change the torque tension relationship, and you might also through this plating, cause a problem with the material itself.

Q Let's deal with a hypothetical. You are called upon by the customer in regard to a mechanical bolt situa- — [12]
tion, where the product as given to them in the present manner does not work in its present form without outside modification such as lubricants and such other items as are added to or subtracted from the article, but it calls for some type change in the article; what takes place at that time?

A Who determines that there is a change made, Boeing, or do we determine it?

Q For instance, who would determine this? Let's even qualify the hypothetical further, that Boeing has called you with regard to a problem, and in your judgment there needs to be changes in the item.

A We would make a suggestion, and then it would depend on the engineering people to decide whether or not they felt that our suggestion would solve the problem.

Q In forming the suggestion of the company, to what extent would that contribute to the servicing process?

A Are you talking about me, as an individual or we as a company?

Q You as an individual.

A Well, I would get a laboratory report, and as I said, we would try to duplicate the problem that Boeing was having with the parts. When I would receive the laboratory report, then I would call the people who ran the test and discuss this with them, and also what we would recommend as a change to solve the problem. I in turn would then go to the Boeing people about this.

[13] —

MR HANSON: Off the record.

(Discussion off the record.)

Q (By Mr. Hanson) Mr. Martinson, I am referring here to a document, which is labeled—it has no dates. It is apparently some correspondence of Mr. Wilkinson at Jenkintown. It is marked with a designation "A". What is the purpose of that correspondence? Could you perhaps describe it in some manner?

A This report was written so that our people, the outside people like myself, and the inside people, would know what the Boeing subcontractors would be, and what attempts they would make, and the approximate value of the items they would make for the first two prototypes of the SST.

Q What purpose does that serve for Standard Pressed Steel?

A It serves several purposes, I guess. One is that when our inside people receive a quotation from one of these people, they would know it would be an SST requirement.

Secondly, it would help our people to determine maybe the amount of business that we could expect from these people in the next year.

Q That would be, now, the subcontractors listed?

A Yes, sir.

Q In regard to the contact with these subcontractors, in regard to their business, who in your company would handle that operation?

— [14]

A An outside sales engineer like myself.

Q I refer you now to some correspondence which is updated, and has the designation "B". What is Fairchild-Hiller?

A Fairchild-Hiller is a subcontractor of Boeing on the SST.

Q And it refers in the correspondence to an approved list. What is an approved list?

A Well, anything you manufacture for Boeing, you have to have qualified at the Boeing source. Boeing determines who will be a supplier of theirs by qualifications done here in the Seattle area.

Now, all of their subcontractors have to buy their requirements from people who are on this approved list. This approved list generally is always on the drawing itself. The drawing shows what the part looks like, and the dimensions and everything else, and it will say "Approved sources are:"

You might get the qualification pieces after a drawing has already been issued, and they will in turn write a letter to Standard Pressed Steel, and a sheet saying that Standard Pressed Steel is an approved source, and what I wanted in this letter to do, was to let our people know that they could go to Fairchild-Hiller and say "Yes, we are an approved source of Boeing on this."

Q That is just what I need right there. That is perfect. Sometimes paraphrasing may be a bit difficult, but just explain it the best you can, how it is and what is your interest. Just give us your impression.

— [15]

I am now referring to correspondence dated April 10th, and which I have marked with a "C". Would you explain the nature of that correspondence.

Q That was to inform Mr. Baumgartner that I had made arrangements for a hospitality room at the Olympic

Hotel for the Society of Aerospace Materials & Process Engineers' meeting here.

Q And in that respect, the company itself would take care of the necessary expenses?

A Yes.

Q Is this society a local society?

A No, sir.

Q Were the participants in that meeting limited to Boeing engineers?

A No, they are from all over the United States.

Q I am referring now to some correspondence dated April 18, 1969. Would you explain the nature of that correspondence?

A I am trying to get my mind back here. When was this, 1969?

Q I think I can be of assistance. My question is in a general way, what is the purpose of this correspondence?

A Well, what I am trying to tell them is that Boeing says "No, they don't want any shortcuts in their qualifying testing. They want you to run two samples with two different counterbores and two different thicknesses." I am referring specifically to the last paragraph. This is a new product and this is in the early days of the development of the 747, and I felt that this product had a potential use in the 747 market, and also tremendous potential for the aerospace industry in general. [16] —

Q This product here was solely for the needs of the Boeing Airplane Company, is that right?

A No.

Q How did it arise?

A It arose because probably we felt that the existing product that they were using, or that the industry was using could be improved upon, and our research and development people spent some time and some

effort in trying to come up with a new way of doing something.

Q And what other market is this new product used in, do you know?

A It would have a potential in the electronics industry. Are we talking about a specific product, sir?

Q I am talking about the reference in this last paragraph, in other words, "Let's go after this market."

A This market would be a nut market, and the nut market would be anyplace where they used nut plates, which would be the electronics industry or the aerospace industry. In some instances you used them on shelving material, shelving, this type of thing. — [17]

Q Do you know any specific customer, other than Boeing, that uses this product?

A Boeing doesn't use it.

Q Boeing doesn't use it?

A No, sir.

Q I am referring now to pieces of correspondence, the first one dated September 26th, which is labeled "E," and on the same date, labeled "F," on October 6th, "G," on October 7th "H," and on the same date, October 7th, correspondence marked "I," all of 1969.

In looking at all of this correspondence as a group rather than individually, as a group, what is the purpose of this correspondence?

A Boeing goes through so many reorganizations, and changes locations so many times, and personnel, you deal with specifics. These pieces of correspondence try to tell our people which people are now handling certain products.

Q The sixty-four dollar question, if you will pardon a trite phrase, why does Standard Pressed Steel need to know this information?

A Well, for many reasons. As an example, a quotation was given to one of our people, at Jenkintown or

Santa Ana, and at one time they were dealing with Mr. "X", and the next day, Mr. "Y" called, and they would want to know why is Mr. "Y" calling, has there been a change in the organization. [18]—

Q I understand that. My question goes to why would the people down at Santa Ana or Jenkintown, for instance—up to this time we have always been talking in terms of the context of your relationship to the customer.

Now, it appears that there is a relationship of either Santa Ana or Jenkintown directly to the customer, of which you are not an intermediary, shall we say, right?

A Well, there are many things that come up. For example, if an order is placed with our facilities and one of the Boeing people wants to follow up on it to see where the delivery is, why the order was late, they don't come to me.

They go to either of the two plants, and you tell them their phone number, or you can get the order for them. As you will notice, the phone numbers are different. This could be that they moved from one location to another location, and it just informs our people what people are buying.

Q In addition to the individuals who are listed as purchasing specialists or control buyers, there are other individuals listed. I refer to a number of individuals on correspondence "G." Of what particular interest are they, as opposed to the purchasing specialists? [19]—

A These would be the people that actually work for the purchasing specialists, and these would be the commodities that they themselves would be responsible for.

Q In this aspect, it lists the titles of some individuals as production specialists, and on other individuals, it does not list a title. What would be their function with Boeing Company?

A I am sorry, I don't understand what you are saying.

Q As for example, let's take the name of Rouse, or Maxwell or Tucker, what type of classification are they? What position would these people have with Boeing Company?

A As you notice, the name above that is Shish, referring to a purchasing specialist?

Q Correct.

A The people below him report to Mr. Shish, and he would be their group leader or supervisor, and they in turn would be responsible and for problems or for consultation, they would go to Mr. Shish.

Q What type qualifications do those people have? I am speaking of their educational background? What type qualifications would they possess?

A I don't work for Boeing. I don't know what they actually would have to have. Off the record, I think they are all college graduates.

Q I am going to a document marked "J." There are a group of documents like it. I am interested not in this specific document, but generally, what does this document do? What is its purpose in the conduct of your business? [20]—

A I am telling our engineering people that Boeing is considering replacing a certain type of fastener with another one, with another type, and if we want to make qualification pieces, I have given them the diameter they will have to make it, and also Boeing specifications, which they will have to qualify it to.

Q The title for the document is Products Engineering Request. Who is this document submitted to?

A This document is submitted to Troyce Wiley, the chief engineer in the Santa Ana plant.

Q This document does not go to Mr. Wilkinson?

A There is a copy to him, and a copy of it went to him when he was not sales manager, and he is not sales manager right now. He has another title.

Q There are three fastener system classifications, I guess, which would be listed in these documents. Could you give me a rather brief explanation of what these three are?

A Yes, this one is circled Aerospace. Our division is broken down into several groups, one of which is Aerospace, another of which is Nut, and another of which is Urnbrako. This shows that this is an Aerospace product. It doesn't show in the Nut products, and it doesn't show in the Urnbrako products.

[21] —

Q Do you handle that product in other lines?

A In other lines?

Q What is the Nut line, as opposed to the Aerospace line? What is the difference?

A Aerospace generally is thought of as bolts and nuts or things that go on bolts, and this is in the Nut division.

Q I am beginning to understand the extent of specialization.

A It is a system, but as far as engineering goes, we have people to take care of bolts, and we have people to take care of nuts.

Q I am asking here for a point of reference, because this testimony may be examined by people who are not of any qualification other than just the average home repairman. Normally, when I go to my hardware store, I buy a bolt and a nut together. They have to fit, and they have to have the same type ribs?

A Threads?

Q Yes, the same type threads on them. Are we saying in this particular context the Aerospace field and the other fields are so specialized that we talk about an individual bolt and a nut, and how do they get together?

A Yes, we do. You talk about them separately. When you use a bolt, a bolt has to go through metal, and these are all high precision bolts, close tolerance

— [22]

bolts, and the majority of the holes you go through are close tolerance holes, and I am talking about a tolerance of maybe 2/1000ths. Your bolt material will go through whatever it is holding together.

Q So what we are saying is that there need not necessarily be a nut onto the bolt?

A If they didn't need threads on it, they wouldn't need a bolt. They could just put a pin in it. The reason for the threads and nuts are for vibration purposes, so when you put the nut on it, it won't fall out of the hole, but even more than that, the nuts you buy at the store are not the nuts and bolts that go on your airplane that Boeing used. They use nuts so they will not vibrate off, and they pass a vibration specification.

Q So on summing this up, simply because it is circled Aerospace, doesn't necessarily mean that is Boeing. You might also circle Nut in regard to Boeing customers?

A Yes, this is a standard form that we have. It is used by all of our people when they are jotting little memos down to our engineering people.

Q Briefly, what is the Urnbrako Division?

A They make sockets, capscrews, socket screws, dowel pins, spring pins, and generally they are the type items that are not used in the Aerospace industry.

Q Do you know if there are any other Standard Pressed Steel people in the State of Washington at this point? — [23]

A Not taking care of this division.

Q But do you know, outside of your division, do you know if Standard Pressed Steel engages in this market in the State of Washington at all?

A I am sure they do, through some distributors.

Q When you say through distributors, could you explain?

Off the record.

(Discussion off the record.)

A Well, all of the products that Urnbrako sells they do sell through distributors, rather than direct sales, such as the Aerospace Division does or the Nut Division does. They have their own people, and I believe the man comes from San Francisco who calls on the Seattle area.

Q And he is a direct employee of Standard Pressed Steel?

A Yes.

Q What is the Worley Division of Standard Pressed Steel?

A I think they make lockers.

Q Do you know how they are distributed in the State of Washington?

A No, sir.

Q Are you familiar with Frank Cohen, Inc.?

A No, sir.

Q Have you had any contact with Frank Cohen, Inc.?

A No, sir.

[24] — Q During the period 1968 and up to November of 1969, did you have any contact with anyone in the State of Washington regarding the Urnbrako Division or the Worley Division?

A No, sir.

Q I am showing you, Mr. Martinson, page 841 of the 1970-71 Seattle telephone directory. Under Standard Pressed Steel there are two listings. Do you have any knowledge of these listings?

A Yes, sir.

Q You mentioned the number EA 2-5600 was your answering service?

A Yes.

Q What is the other number?

A I believe that is the Worley and/or Columbia Holwell people.

Q Are there occasions when people will have the numbers mixed up in trying to contact you?

A It has happened once. I believe if you would call that number now, it has been disconnected. I don't know for sure, I believe once that has happened since I have been here.

Q Why weren't the different divisions named, any particular reason you know of?

A I have no idea.

Q Mr. Martinson, in speaking of the Aerospace or the Nut Divisions, at any time during the tax period involved, were inventories kept in the State of Wash- — [25]
ington?

A No, sir.

Q In regard to the price and quantities of your products, did you perform any services for the customer?

A No, sir.

Q How is that handled?

A That is through either one of the plants, depending on the item that they want to have a price and delivery on, and they are given a price and delivery from either of the two plants.

Q How are the deliveries made?

A Well, by air or by truck.

Q Are you informed of the orders, deliveries, et cetera?

A I get a copy of the invoice.

Q In performing your function for Standard Pressed Steel, are you remunerated in any way based on the volume of orders?

A No.

Q Your fee is fixed, I assume?

A Yes.

Q In referring back to the promotional room, the complimentary room at the Olympic Hotel, to what ex-

tent were you reimbursed for your expenses in the cost of that function?

A All of the expenses were sent directly to the home office.

Q Were you provided directly with any reimbursed expenses of your own? I am speaking now of food and refreshment.

[26] —

A If I had any food or refreshment, I was refunded, I was paid for it.

MR. HANSON: I have no further questions.

CROSS EXAMINATION

By MR. KELLER:

Q I gather from your last testimony that you at no time ever received an order from any Boeing personnel for Standard Pressed Steel products, is that right?

A That's right.

Q And you never placed an order with Standard Pressed Steel on behalf of or at the request of Boeing, is that correct?

A To the best of my knowledge, that is not the procedure we follow.

Q The primary purpose of your time then was performed in advising Standard Pressed Steel of future production and qualifying Standard Pressed Steel, to assist them in qualifiying on the ones they were interested in, is that right?

A Yes.

Q What percentage of your time would you say was spent in performing those two functions?

A I would say 80 or 90 percent.

Q And the balance of your time was on complaints and visiting firemen, is that right?

[27] —

A Yes, that's right. When we would talk about these things, yes, sir.

MR. KELLER: I have nothing further.

(Deposition concluded at 3:15 p.m.)

(It was agreed by and between counsel and the witness that the reading, examination and signing of this deposition were waived, and that notice of filing was also waived.)

CERTIFICATE — [28]

STATE OF WASHINGTON }
COUNTY OF KING } ss.

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed and foregoing deposition of each witness named herein was taken stenographically before me and reduced to typewriting under my direction;

I further certify that each said witness examined, read and signed his deposition after the same was transcribed, unless indicated in the record that the parties and each witness waive the signing;

I further certify that all objections made at the time of said examination to my qualifications or the manner of taking each deposition, or to the conduct of any party, have been noted by me upon each said deposition;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

I further certify that each witness before examination

was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

I further certify that the deposition, as transcribed, is
[29] —a full, true and correct transcript of the testimony, including questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing examination;

I further certify that I am sealing the deposition in an envelope with the title of the above cause thereon, and marked "Deposition" with the name of each witness, and promptly delivering the same to the Clerk of the above entitled Court;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this ..... day of April, 1971.

Notary Public in and for the State of Washington, residing at Mercer Island.

EXHIBIT A-1

STANDARD PRESSED STEEL COMPANY
Intra Company Correspondence

FROM: R. Martinson

TO: H. Wilkinson

SUBJECT: SST Subcontractors

The Boeing subcontractors, what they will make and approximate Boeing cost for the two prototypes are as follow:

AERONCA - Middletown, Ohio	
Wing trailing edge flaps and flaperons	$6 million
CLEVELAND PNEUMATIC - Cleveland, Ohio	
Main and nose landing gear	$2.5 million
FAIRCHILD-HILLER REPUBLIC - Farmingdale, N.Y. and Hagerstown, Maryland	
Aft fuselage section, empennage main structure	$35 million
NORTH AMERICAN ROCKWELL - Los Angeles and Tulsa	
Leading edge flaps, outboard wing box, ventrical fin, rudders, tail leading edges	$35 million
NORTHROP - Hawthorne, California	
Cab and nose section	$12 million
ROHR - Chula Vista, California	
Engine pods, spares, test equipment, main landing gear doors	$21 million
BOEING - Wichita	
Two foreward fuselage sections, nose gear doors	$31 million

I feel it is important that all outside sales, inside sales and engineering departments at both Jenkintown and Santa Ana receive copies of this so that everyone will be aware of the SST subcontractors. This along with the list of all SST parts supplied earlier should help SPS in getting their share of the business.

A-1

RM/bt

[2

EXHIBIT A-2

SST Prototype Subcontractor Team
BOEING
NAFC
FMR
AERONCA
ROHR
WICHITA
NORTHROP
CLEVELAND PNEUMATIC
HEATH TECNA

EXHIBIT B

R. Martinson

H. Wilkinson

Potential Large Users of Beta III Rivets

Interviewed: R. Lee

Fairchild Hiller will be the largest user of rivets. They will make two body sections and the vertical and horizontal stabilizers. Northrup will make the nose and drop snoop.

Please make sure these customers know SPS is on the approved list. The other approved sources are:

Screw Corp.
Olympic
AIC
Hi-Shear
Camcar.

/bt

EXHIBIT C

STANDARD PRESSED STEEL COMPANY

Intra Company Correspondence

April 10, 1969

FROM: R. Martinson

TO: T. Baumgartner

SUBJECT: SOCIETY OF AEROSPACE MATERIAL & PROCESS ENGINEERS

I have contacted Gerry Long of the Olympic Hotel and made arrangements for a hospitality room September 8-9-10. Please advise me whether we are still going to participate.

RM/bt
cc: H. Wilkinson

EXHIBIT D

STANDARD PRESSED STEEL COMPANY

Intra Company Correspondence

April 18, 1969

FROM: R. Martinson

TO: H. Wilkinson

SUBJECT: Evaluation of Self-Clinching Nuts

In my letter of April 9, 1969, I submitted a request from Boeing to run a qualification test of the self-clinching nuts on the pieces they requested.

Jake Devlin asked Len Smith to discuss with me the possibility of cutting the number of samples - using only one counter bore in one sheet thickness instead of two. The answer is "no". I feel this product has the best possibility for making SPS become a sole source item for the industry.

Let's go after this market and prove to ourselves that SPS can market a new product!

Bob Martinson

RMiwcb
cc: F. Kinsella
J. Devlin
L. Smith
T. Baumgartner
C. Hood
File Copy

EXHIBIT E

STANDARD PRESSED STEEL COMPANY

Intra Company Correspondence

September 26, 1969

FROM: R. Martinson

TO: H. Wilkinson

SUBJECT: JOB RESPONSIBILITY AND PHONE NUMBER CHANGES FOR 737 GROUP

Here is the new job responsibility and phone numbers for the Seattle Division Material (737) effective 9/19/69.

Alex Tulentseff	Group Supervisor	655-1554
Len Curtis	Purchasing Specialist	655-1536
Roger Steeds	Control Buyer Rivets Nuts Nutplates Washers	655-1737
Chuck Pendleton	Control Buyer Taper-Lok Straight Shank Bolts (All alloys except LU series) Raw Material	655-1421
Al Hultman	Control Buyer Lockbolts Hi-Loks LU series bolts Collars AN, MS, NAS bolts & screws	655-8431
Donna Woodard	Clerk	655-1737

RM:pmb

cc: H. Burgmon, F. Corrigan, J. Devlin, W. Hoffman, W. Millar, W. Pompeo, D. Redman, J. Trilling

EXHIBIT F

STANDARD PRESSED STEEL COMPANY

Intra Company Correspondence

September 26,1969

FROM: R. Martinson

TO: H. Wilkinson

SUBJECT: JOB RESPONSIBILITY & PHONE NUMBER CHANGES FOR 707-727 GROUP

Here are the new phone numbers and job responsibility for the Renton (707-727) material group.

Hal Hammill	Group Supervisor	237-8698
Jim Hoffnquer	Purchasing Specialist	237-8618
Cal Parker	Control Buyer Hi-Loks Hi-Strength	237-3071-3072
Carl Thurman	Control Buyer Straight Shank A286 160 KSI Bolts	237-3794-3795
John Tinsley	Control Buyer Straight Shank Titanium medium and low strength bolts & screws	237-3794-3795
Dorothy Cox	Control Buyer Taper-Loks Lockbolts Blind bolts	237-3071-3072
V. Atkins	Clerk	237-3071-3072

RM:pmb

cc: H. Bergnon
F.Corrigan
J. Devlin
W. Hoffman
W. Millar
W. Pompeo
D. Redman
J. Trilling

EXHIBIT G

STANDARD PRESSED STEEL COMPANY

Intra Company Correspondence

October 6, 1969

FROM: R. Martinson

TO: H. Wilkinson

SUBJECT: New Phone Numbers for Everett Div. (747) Material Group. Also the job responsibility.

G. Thomas, Group Supervisor, will be leaving BOEING October 15; no replacement has been announced.

Shish - Purchasing Specialist, Major Fasteners, 386-3394.

Rouse - Titanium and Steel Taper-Lok and Titanium Straight shank Bolts, 386-2337.

Maxwell - Alloy steel and titanium Hi-Lok bolts, 386-2337.

Tucker - Steel, A286, H-11 and Managing bolts, 386-2276.

Shay - Nuts, nutplate, collars and alloy steel 180 KSI bolts, 386-2276.

Coats - Purchasing Specialist, minor fasteners.

Reidasch - Steel Hi-Lok bolts, 386-3415.

McDaniel - Steel lok and blind bolts and screws, 386-3415.

Richards - Washer, spacers bushing, insert, pin and studs, 386-2901.

Burt - Rivets and Riv-nuts, 386-2901.

MAIL STOP NUMBER: 03-22.

RM:bs

cc: W. Millar
F. Corrigan
J. Trilling
J. Devlin
W. Pompeo
W. Hoffman
H. Burgnon
D. Redman

EXHIBIT H

STANDARD PRESSED STEEL COMPANY

Intra Company Correspondence

October 7, 1969

FROM: R. Martinson

TO: H. Wilkinson

SUBJECT: MTU Group

This is the new organizational chart for the MTU Group.

RM:bs

Enclosure

cc: C. Hood
J. Trilling
J. Devlin
E. Gowen, Jr.

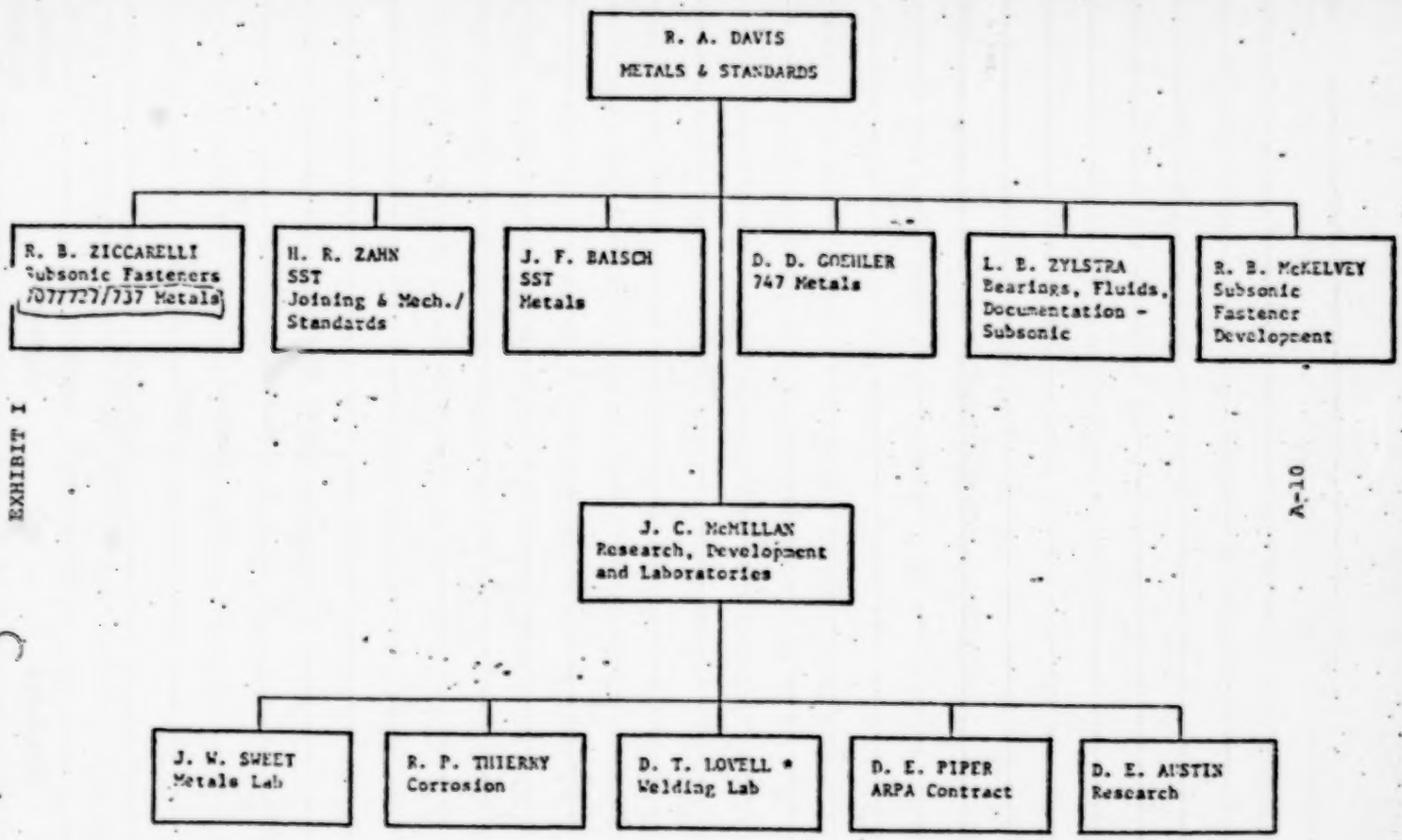
R. A. DAVIS
METALS & STANDARDS
R. B. ZICCARELLI
Subsonic Fasteners
/077727/737 Metals
H. R. ZAHN
SST
Joining & Mech./
Standards
J. F. BAISCH
SST
Metals
D. D. GOEHLER
747 Metals
L. B. ZYLSTRA
Bearings, Fluids,
Documentation -
Subsonic
R. B. McKELVEY
Subsonic
Fastener
Development
J. C. McMILLAN
Research, Development
and Laboratories
J. W. SWEET
Metals Lab
R. P. THIERRY
Corrosion
D. T. LOVELL *
Welding Lab
D. E. PIPER
ARPA Contract
D. E. AUSTIN
Research

EXHIBIT I

EXHIBIT J

PRODUCT ENGINEERING REQUEST | SPS DRAWING NO. | PROJECT NO.

AEROSPACE | NUT | UNBRAKO | FASTENER SYSTEMS

CUST. DRAWING NO. | REQUESTED BY | DATE

PRODUCT DESCRIPTION

TEMP. RANGE

TORQUE

PRELOAD

USED WITH

DOLLAR POTENTIAL

TARGET DATE | ENGINEER ASSIGNED | EXT.

PRODUCT ENGINEERING REQUEST

SPS DRAWING NO.

PROJECT NO.

AEROSPACE NUT UNBRAKO FASTENER SYSTEMS

CUST. DRAWING NO.

REQUESTED BY

DATE

PRODUCT DESCRIPTION

TEMP. RANGE

TORQUE

PRELOAD

USED WITH

DOLLAR POTENTIAL

TARGET DATE

ENGINEER ASSIGNED

PRODUCT ENGINEERING REQUEST | SPS DRAWING NO. | PROJECT NO.

AEROSPACE | NUT | UNBRAKO | FASTENER SYSTEMS

	CUST. DRAWING NO.	REQUESTED BY	DATE

PRODUCT DESCRIPTION

	TEMP. RANGE
	TORQUE
SPECS.	PRELOAD
MANCE SPECS.	USED WITH
	DOLLAR POTENTIAL

TH LEVEL

ATION

TED COMPLETE DATE	TARGET DATE	ENGINEER ASSIGNED	CAT.

MENDATIONS

PRODUCT ENGINEERING REQUEST	SPS DRAWING NO	PROJECT NO.

AEROSPACE NUT UNBRAKO FASTENER SYSTEMS

	CUST. DRAWING NO.	REQUESTED BY	DATE

PRODUCT DESCRIPTION

	TEMP. RANGE
	TORQUE
SPECS.	PRELOAD
NCE SPECS.	USED WITH
	DOLLAR POTENTIAL

LEVEL

ION

For application of S.P.U.
C.T. Tri Lobe Bolt with
Locking Pin 1 1-
Use CBC KEY S-9
Use KEY S-D

TED COMPLETE DATE	TARGET DATE	ENGINEER ASSIGNED	EXT.

ENDATIONS

PRODUCT ENGINEERING REQUEST	SPS DRAWING NO.	PROJECT NO.

AEROSPACE | NUT | UNBRAKO | FASTENER SYSTEMS

	CUST. DRAWING NO.	REQUESTED BY	DATE 5-7-7

PRODUCT DESCRIPTION

	TEMP. RANGE
L	TORQUE
SPECS.	PRELOAD
ANCE SPECS.	USED WITH
	DOLLAR POTENTIAL

H LEVEL

TION

BAC BIS FY-4-9
9-12
12-16
FW 4-8
8-12
12-16

ED COMPLETE DATE	TARGET DATE	ENGINEER ASSIGNED	EAT.

NDATIONS

PRODUCT ENGINEERING REQUEST | EPS DRAWING NO. | PROJECT NO.

AEROSPACE | NUT | UNBRAKO | FASTENER SYSTEMS

CUST. DRAWING NO. | REQUESTED BY | DATE

PRODUCT DESCRIPTION

TEMP. RANGE

TORQUE

PRELOAD

USED WITH

DOLLAR POTENTIAL

COMPLETE DATE | TARGET DATE | ENGINEER ASSIGNED | SAT.

PRODUCT ENGINEERING REQUEST | SPS DRAWING NO. | PROJECT NO.

AEROSPACE | NUT | UNBRAKO | FASTENER SYSTEMS

	CUST. DRAWING NO.	REQUESTED BY	DATE

PRODUCT DESCRIPTION

	TEMP. RANGE
	TORQUE
SPECS.	PRELOAD
RMANCE SPECS.	USED WITH
	DOLLAR POTENTIAL

TED COMPLETE DATE	TARGET DATE	ENGINEER ASSIGNED	EST.

PRODUCT ENGINEERING REQUEST | SPS DRAWING NO. | PROJECT NO.

AEROSPACE | NUT | UNBRAKO | FASTENER SYSTEMS

CUST. DRAWING NO.	REQUESTED BY	DATE

PRODUCT DESCRIPTION

	TEMP. RANGE
	TORQUE
	PRELOAD
	USED WITH
	DOLLAR POTENTIAL

To be known
as Unbrako Cheese

Tooling required
1. To manufacture to meet
the main Parts
2. To Trace main head
Profile.

TARGET DATE	ENGINEER ASSIGNED	EXT.

EXHIBIT K

EXHIBIT L

STANDARD PRESSED STEEL CO.

Intra Company Correspondence
November 4, 1970

OM: R. Martinson

H. Sturges

JECT: Competitive Prices at Boeing

As we discussed, Herb, SPS prices are considerably higher than our competition in this area. The following prices are from a recent quote. It is also interesting to note, Boeing didn't always buy the lowest price. Delivery and stock also entered into the decision. Most companies are quoting four week delivery.

Quantity	Part Number	SPS Price	Low Price	Bought For
500	LJ4D-20	64.00/C	39.00/C	47.60/C
500	LJ5D-20	90.50/C	50.00/C	75.10/C
250	LJ6-7	125.60/C	43.00/C	61.00/C
250	LJ6-17	146.10/C	45.50/C	61.00/C
1,000	LM3-8	28.70/C	13.00/C	17.00/C
100	LM4-64	294.70C	155.00/C	149.00/C
1,000	MT6-14	76.60/C	35.40/C	39.20/C
500	MT5-26	153.00/C	67.00/C	70.00/C
250	MJ6-72	398.00/C	165.00/C	230.00/C
	MT14T-33	20.40/Ea.		10.00/Ea.
	MT6T-32X	6.39/Ea.		4.00/Ea.
	MT6T-40	2.54/Ea.		1.50/Ea.

Bob

RM:mm
cc: C. Hood
A. Leeder
B. Matievich
H. Wilkinson